

NO. 34423-8-II

**COURT OF APPEALS FOR DIVISION II  
STATE OF WASHINGTON**

PIERCE COUNTY, et al.,

Respondents/Cross-  
Appellants,

v.

STATE OF WASHINGTON, et al.,

Appellants/Cross-  
Respondents.

BRIEF OF  
RESPONDENTS/CROSS-  
APPELLANTS

APPEALS  
COURT OF APPEALS II  
STATE OF WASHINGTON  
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BY *[Signature]*  
IDENTITY

**ORIGINAL**

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## I. INTRODUCTION

From the inception of the State's mental health system, the Involuntary Treatment Act ("ITA") has made the State primarily and ultimately responsible for the care of the mentally ill. RCW 71.05.001, *et seq.* As the philosophy of treating mentally ill patients evolved from institutionalized treatment to providing services to patients in their communities, the Legislature enacted the Community Mental Health Services Act ("CMHSA"), Ch. 71.24 RCW, which shifted the care of less severely mentally ill persons to local governments agencies, known as Regional Support Networks ("RSNs"). The intent of the Legislature was to transfer funding and responsibility for the mentally ill from the State to the RSNs in order to maintain the mentally ill in their communities where possible, while the State retained responsibility for the most severely mentally ill. RCW 71.05.010(6); RCW 71.24.015; RCW 72.23.025.

This case arose because, at the same time as the grounds for civil commitment were being expanded, the State began closing state hospital beds without providing sufficient resources to provide for the needs of the mentally ill in the community. As a result, more persons were committed than the state hospitals could reasonably accommodate, and the Department of Social & Health Services ("DSHS") began refusing admission to patients who were involuntarily committed to the state hospitals. By refusing to accept these patients, DSHS effectively shifted responsibility for them to local governments in violation of its express obligations under the ITA and the CMHSA. DSHS also began allocating

state hospital beds among the RSNs without any statutory authority for doing so, and prioritized admissions to the state hospitals based on whether a RSN was within its bed allocation. It also penalized those RSNs that exceeded their bed allocations by withholding funds necessary for community-based care. Finally, to make up for the shortage of state funds, but contrary to federal law, DSHS structured its contracts with RSNs so as to require the use of Medicaid funds to provide services not covered by Medicaid.

Plaintiffs<sup>1</sup> (hereinafter, “Pierce County” or “the County” unless otherwise specified) brought this lawsuit to force DSHS to fulfill its statutory and contractual obligations. The County sought to establish that: (1) DSHS was required to accept physical custody of patients committed to Western State Hospital (“WSH”) for 90 days or more and to pay for the costs of caring for those patients who it refused to accept; (2) the practice of assessing and withholding “liquidated damages” based on DSHS’s bed allocation formula was illegal; (3) pursuant to former RCW 71.24.300(1)(d), short-term ITA commitments to Western State Hospital (“WSH”) should be counted towards PCRSN’s obligation to provide 85% of evaluation and treatment (“E&T”) services “within the boundaries” of PCRSN (“the 85% rule”); and (4) the contracts between DSHS and PCRSN should be modified to bring them into conformity with federal

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<sup>1</sup> Plaintiffs are Pierce County, Pierce County Regional Support Network (“PCRSN”), Puget Sound Behavioral Health (“PSBH”), and Washington Protection and Advocacy System (“WPAS”).

requirements concerning the use of Medicaid funds.

The trial court held that DSHS had sole responsibility for long-term patients under the ITA and that it was financially responsible for such patients. CP 1862. It entered an injunction requiring DSHS to timely accept all such PCRSN patients. CP 1863-1864. It further found that DSHS did not have statutory or contractual authority to impose liquidated damages when PCRSN exceeded its bed allocation. CP 1857. After trial, judgment was entered in favor of Pierce County for more than \$2 million, reflecting the cost of caring for patients denied admission to WSH and refund of liquidated damages, but the court refused to award prejudgment interest. CP 4338-4340. The County's claims concerning the 85% rule and that the contracts violated Medicaid law were dismissed. CP 2238-2240; CP 4334-4336.

Fearful that other RSNs would file similar lawsuits, DSHS sought legislation amending the CMHSA and the ITA to bar the RSNs from suing in the manner that Pierce County did. Laws of 2006, Ch. 333 ("Ch. 333"). After the legislation became effective, DSHS moved to vacate the injunction. The trial court denied the motion.

## **II. COUNTER-STATEMENT OF THE ISSUES**

- A. Whether, after entry of an order of remand by the superior court pursuant to RCW 71.05.320, DSHS may refuse physical custody of long-term ITA patients and whether DSHS is financially responsible for the costs of caring for such patients after it has refused them.
- B. Whether the trial court erred by denying DSHS's second motion to vacate its injunction requiring timely acceptance of long-term ITA

patients, which was based on Laws of 2006, Ch. 333, which DSHS interprets as retroactively denying Pierce County any judicial remedy for the agency's wrongful conduct.

- C. Whether former WAC 388-865-0203<sup>2</sup> and related contract provisions authorizing "liquidated damages" are invalid and whether the trial court erred by ordering refund of amounts wrongfully withheld.

### **III. ASSIGNMENTS OF ERROR AND ISSUES ON CROSS-APPEAL**

- A. Assignment of Error: The trial court erred when it entered findings, conclusions and judgment dismissing the County's claim that DSHS's contract requirements required PCRSN to use Medicaid funds for non-Medicaid purposes.<sup>3</sup> CP 4336.

Issue: Whether the trial court erred when it refused to reform the contracts to conform to federal law.

- B. Assignment of Error: The trial court erred when it refused to award prejudgment interest to the County. CP 4327-4328; CP 4333-4334.

Issue: Whether sovereign immunity insulates DSHS from paying pre-judgment interest on the awards to the County.

- C. Assignment of Error: The trial court erred by dismissing Pierce County's claim and partially granting summary judgment in favor of DSHS on the claim that short-term ITA placements at WSH count towards PCRSN's obligation to comply with the 85% rule.<sup>4</sup> CP 2338-2340.

Issue: Whether WSH is "within the boundaries" of PCRSN.

### **IV. COUNTER-STATEMENT OF THE CASE**

- A. **Statutory Roles and Responsibilities of State and RSNs**

DSHS is the State mental health authority charged with managing

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<sup>2</sup> Former WAC 388-865-0203 is attached hereto in Appendix B.

<sup>3</sup> Findings of Fact and Conclusions of Law entered 1/20/06 is attached hereto in Appendix C, and Judgment and Order entered 1/20/06 is attached hereto in Appendix D.

<sup>4</sup> Order Granting In Part and Denying In Part Plaintiffs' Motion for Partial Summary Judgment Re "85% Requirement" is attached hereto in Appendix E.

funding and mental health services in the State. RCW 71.24.035(1). The ITA and CMHSA create a system whereby DSHS contracts with local governments to administer the involuntary commitment process, and to provide E&T services as well as certain community-based mental health services while the State itself remains responsible for patients with the most severe and long-term mental illnesses, who require treatment at a state hospital or other certified institution for long-term care. RCW 72.23.025. WSH, located in Pierce County, Washington, is the only facility in western Washington that is legally authorized to accept and treat persons who have been involuntarily committed on a long-term basis, i.e., 90 days or longer. RCW 72.23.020; RCW 72.23.025; CP 1094; CP 14. The State retains ultimate responsibility for the mentally ill if the county authorities do not fulfill their duties. *See*, RCW 71.24.035(4). CP 68.

Funds to pay for the services provided by local governments are transferred pursuant to contract under the CMHSA. RCW 71.24.035(6) and RCW 71.24.035(15)(c). DSHS also is responsible for administering Medicaid funds under Title XIX of the Social Security Act. RCW 74.04.050. RSNs receive Medicaid funds to provide services to Medicaid-eligible persons and non-Medicaid, or “state-only”, funds to provide mental health services to non-Medicaid patients. RP Stewart 11/10/05 at 13-14, 78-79.

## 1. ITA

Under the ITA, a person may be detained or committed on a short-term basis, up to 17 days, or on a long-term basis, generally 90 or 180 days. RCW 71.05.230 and RCW 71.05.280. Under the statutes in effect at the time relevant to this lawsuit<sup>5</sup>, the commitment process began when a person was referred to a County Designated Mental Health Professional (“CDMHP”) for an evaluation in order to determine whether the person “presents a likelihood of serious harm” to self or others, or is “gravely disabled” as a result of a mental disorder. RCW 71.05.150. If such a determination is made, the CDMHP orders the person detained for a period of up to 72 hours of treatment at an E&T facility. If 72-hour care is not sufficient, the ITA authorizes a mental health professional to petition for and the court to order an additional 14 days of involuntary treatment. RCW 71.05.230-240.

Should a person require long-term care, RCW 71.05.290 authorizes a mental health professional to petition the superior court for up to 90 days of involuntary treatment (or 90 days of less restrictive treatment), based on criteria set forth in RCW 71.05.280. If the court determines that the patient meets the criteria for 90 days of involuntary treatment, RCW 71.05.320(1) requires that the superior court “shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of

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<sup>5</sup> Unless otherwise noted, all references to RCW 71.24.010, *et seq.*, and RCW 71.05.010, *et seq.*, are to the statutes that existed during the relevant time period. Former Chapters 71.24 and 71.05 RCW are attached hereto in Appendix A.

intensive treatment.” (Emphasis added). Similarly, if the criteria for a 180-day commitment have been met, treatment must be in a facility certified for 180-day treatment by the department.” RCW 71.05.320(2)(a) *Id.* In Pierce County, the order of commitment specifies the facility to which the person is committed; *i.e.* WSH. CP 308.

When the ITA was originally enacted in 1973, the Legislature charged DSHS with responsibility for both short-term and long-term patients. Although the Legislature subsequently shifted responsibility for short-term patients to the RSNs when it enacted the CMHSA, none of the amendments to the ITA shifted the responsibility for the care of long-term involuntary commitment patients to the RSNs. The Legislature has subsequently amended the ITA several times, including amendments in March 2006 in response to this lawsuit. CP 112-113; CP 3333-3364. While these amendments broadened the criteria for detentions and involuntary commitments, resulting in an increase in the number of people who have been committed by the Court to WSH, they did not shift responsibility for long-term patients to RSNs. *Id.*; CP 112-113; CP 117.

## **2. CMHSA**

When the CMHSA was enacted in 1989, it largely, but not entirely, shifted responsibility for short term patients from DSHS to the RSNs, requiring that they:

[p]rovide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW.

RCW 71.24.300(1)(d).

Furthermore, while the RSNs and DSHS share a duty to provide evaluation and treatment services to short-term patients,<sup>6</sup> CMHSA limits the RSN's obligations to provide mental health services within "available resources." "Available resources" for purposes of Ch. 71.24 RCW include "state-only" funds appropriated by the legislature, and portions of federal block grant funds. RP Gunther 11/21/05 at 8<sup>7</sup>; RP Lewis, 11/16/05 at 18. "Available resources" excludes federal Medicaid funds and state funds that must be used to generate the federal Medicaid payments ("state matching funds"). "Available resources" do not include "Medicaid savings"—amounts that RSNs may have left over after providing required services to Medicaid-eligible persons. RP Lucas 11/22/05 at 18; RP Gunther 11/21/05 at 7.

**B. The PCRSN-DSHS Contracts and Funding Thereunder**

The contracts between DSHS and RSN serve two distinct purposes: to fulfill the requirements of the CMHSA and to satisfy Title XIX Medicaid requirements in order to obtain federal Medicaid funds. The 2001 and 2003 contracts were combined contracts, meaning that the funds and requirements were combined to serve both Medicaid and non-Medicaid clients. CP 130; CP 3217. DSHS provided the RSN with a lump sum monthly payment with which to provide all services required by

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<sup>6</sup> See, RCW 71.24.035(15)(a) and (c); RCW 71.24.300; and RCW 71.24.025.

<sup>7</sup> References to trial testimony are by witness, date of testimony and page number of transcript; e.g., RP [witness] [date] [page].

the contract. RP Lewis 11/17/05 at 78; RP Gunther 11/22/05 at 27. The Medicaid portion of the contract put the RSNs “at risk” for providing all covered services to Medicaid enrollees. RP Gunther 11/22/05 at 15; CP 192-193. While the CMHSA limits RSNs obligation to provide services not covered by Medicaid to the State’s “available resources,” DSHS’s contracts required RSNs to provide certain services to all persons without regard to Medicaid eligibility (“non-Medicaid services”) or the “available resources” limitation. RP Stewart 11/10/05 at 92-93, 97, 101-102; CP 127-203. DSHS knew that the state-only money that it distributed was insufficient to cover the costs of required non-Medicaid services. CP 4171-4172. The only way for PCRNS to provide the services required by its contract was to use its Medicaid “savings” to cover the shortfall. *Id*; RP Stewart 11/10/05 at 83, 92-93, 101-02; RP Dula 11/14/05 at 42, 83, 87; RP Lewis 11/16/05 at 21-23, 34.

Notwithstanding these requirements, the RSN contracts specifically provided that all provisions of the contract must be consistent with federal and state law and that if any provision is not consistent with state and federal law, the provision “shall be amended to conform” with the law. Trial Ex. 6 at D0147572; Trial Ex. 7 at PC014383. Trial Ex. 6 at 4 of 36 (D0147572); Trial Ex. 7 at 12 of 41 and Amendment #6024PF, p. 5 (“Any provision of this Agreement which conflicts with state and federal statutes, or regulations, or [CMS] policy guidance is hereby amended to conform to the provisions of state and federal law and regulations.”).

**1. The contract term conflicted with state law.**

CMHSA requires DSHS to enter into biennial contracts with RSNs. RCW 71.24.035(15)(b). Those contracts set forth the responsibilities of the RSNs, and they refer to and incorporate the statutory duties assigned to the RSNs by the CMHSA. RCW 71.24.300(1); CP 471; CP 496-497. Funding to pay for the services provided by the RSNs is transferred pursuant to the contracts. *See*, RCW 71.24.035(15); CP 88 ¶ 4. Under Ch. 71.24 RCW, DSHS was required to allocate all “available resources” to RSNs. RCW 71.24.035(15)(c) and (e).

In fact, the contracts imposed additional duties on the RSNs, beyond those authorized by statute. RP Stewart 11/10/05 at 97-98, 101-02, 104. For example, the contracts require the RSNs to provide non-covered services to persons not eligible for Medicaid, regardless of “available resources.” Even if an RSN had no “available resources,” it was obligated to provide these services under its contract with MHD. RP Gunther 11/22/05 at 59-60; RP Stewart 11/10/05 at 29-30; CP 2992-2993;<sup>8</sup> RP Lewis, 11/16/05 at 20. Those required services were:

- short term ITA detentions and commitments for non-Medicaid eligible individuals and such services provided to Medicaid-eligible individuals that are residents of an Institution for Mental Disease (“IMD”) who are under 21 or over the age of 65;
- all ITA investigations and administration costs, including the costs of ITA court hearings for Pierce County residents as well as residents of other counties when the hearing is held at WSH;

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<sup>8</sup> To compound the problem, when PCRSN entered into its contracts with MHD in 2001 and 2003, it did not know the amount of available resources that it would receive to provide the services required by statute and contract. RP Dula 11/14/05 at 26.

- crisis services to non-Medicaid eligible individuals;
- the room and board portion of residential services to Medicaid-eligible individuals, and all residential services to non-Medicaid eligible individuals;
- liaison services to WSH and to other IMDs for all patients;
- the state match portion of Medicaid Personal Care costs for Medicaid-eligible individuals; and
- services to individuals in jail or prison.

RP Stewart 11/10/05 at 14-30; RP Lewis 11/16/05 at 20. CP 1042-1043.

## **2. Medicaid Portion of Contracts**

The Medicaid portion of the contracts refer to the RSN as a managed care entity known as a “Prepaid Health Plan” (“PHP”) (2001—2003 contract) or a “Prepaid Inpatient Health Plan” (“PIHP”) (2003-2005 contract). CP 175; Trial Ex. 6 at 4 of 36 (D0147572); Trial Ex. 7 at 12 of 41 (D0135146). Under this system, DSHS paid PCRSN a fixed, prospective per-member, per-month payment called a “capitated rate” for all persons enrolled in the Medicaid program. 67 Fed.Reg. 40989; 42 CFR 438.6(a); 42 U.S.C. § 1396(b)(2)(A)(iii). Both the 2001 and 2003 contracts placed the RSN “at risk” for the provision of all services covered by Medicaid to all Medicaid eligible individuals within the RSN’s service area.<sup>9</sup> CP 192. Federal law rewarded efficiency, by permitting the RSN to retain any Medicaid funds remaining after all Medicaid-covered services have been provided. These excess funds are referred to as “Medicaid savings.” CP 192-193; RP Lewis 11/16/05 at 17; RP Gunther 11/22/05 at

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<sup>9</sup> To be “at risk” means that an RSN must provide all covered services with the funds provided, and if there are not sufficient funds provided by the State, a RSN must make up the difference. RP Fitschen 11/15/05 at 180.

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Since 1998, Federal Medicaid policy has prohibited states from requiring PHPs to use their Medicaid savings to provide non-Medicaid services. RP Lewis 11/16/05 at 16-17; Trial Ex. 45. A PHP was permitted to “voluntarily” elect to use Medicaid savings for non-Medicaid eligible persons and for non-covered services without violating Medicaid law, however. Trial Ex. 45; CP 193.

Despite the clear prohibition against requiring use of Medicaid savings for non-Medicaid services, DSHS’s contracts required Pierce County to provide services for which Medicaid funds could not be used, without adequate non-Medicaid funding to pay for such services. RP Stewart 11/10/05 at 14-30; RP Lewis 11/16/05 at 20; CP 4172-4173. In state fiscal years 2003, 2004 and 2005, the amount of state-only “available resources” fell far short of the non-Medicaid services that the RSN contract required PCRSN to provide. CP 3895-3896. In each case, DSHS withheld Medicaid funds due to PCRSN to cover the shortfall. CP 4190-4191.

**C. Historical Use of WSH For Long-term Commitments AND Short-Term Detentions**

In the early 1980’s, when WSH began refusing to accept short-term patients who were detained by mental health professionals,<sup>10</sup> Pierce County sought and obtained a writ of mandamus to compel WSH to accept

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<sup>10</sup> Before enactment of CMHSA, the ITA made DSHS responsible for all short term and long-term patients. Former RCW 71.05.170.

those patients. *Pierce County Office of Involuntary Commitment v. Western State Hospital*, 97 Wn.2d 264, 644 P.2d 131 (1982) (“*Pierce County I*”). Thereafter, as need for E&T services increased, repeated efforts were made to build a new E&T facility in Pierce County. CP 1566. Each time, DSHS opposed the efforts on the grounds that WSH was available to PCRSN as its E&T facility. *Id.*<sup>11</sup>

In August 2000, PCRSN purchased Puget Sound Hospital (renamed PSBH), using Medicaid savings, to become Pierce County’s E&T facility. CP 1555; RP Lewis 11/16/05 at 8. With the purchase of PSBH, the County was able to increase the number of short-term patients to whom it provided services, and to ease the burden on WSH. RP Lewis 11/16/05 at 14, 17; CP 1555. WSH remained the only facility in Western Washington certified to care for long-term ITA patients, however. CP 91.

#### **D. Response to Insufficient Bed Capacity at WSH**

In 2001, DSHS sought to further reduce the number of civil commitment beds at WSH. CP 442-443. It proved extremely difficult to place a larger number of long-term WSH patients in the community, however. In the same time-frame, the Legislature (responding to several notorious incidents involving the mentally ill) expanded the criteria for

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<sup>11</sup> When Pierce County requested funds to construct a new E&T facility, DSHS denied the request, assuring the County that it could use WSH as its E&T facility. In the mid-1990’s, the Psychiatric Institute of America sought approval to construct a new psychiatric hospital in Pierce County, which would have provided E&T services. CP 1566. DSHS opposed construction of the new facility again in part because WSH was available as PCRSN’s E&T facility *Id.* In March 2000, DSHS acknowledged that it had, in fact, discouraged PCRSN from creating new E&T capacity and instead, directed it to use WSH as its E&T facility. CP 1545-46, 1548-49.

civil commitments. CP 112-113. Coupled with a chronic shortage of community resources, these circumstances caused a chronic shortage of beds at the state hospitals. CP 237-238.

As a result of the bed closures that occurred during the 2001-2003 biennium, together with a reallocation of beds among the RSNs, the number of patients who were involuntarily committed for 90 and 180 days from Western Washington RSNs frequently exceeded DSHS's calculation of WSH's capacity, and PCRSN frequently exceeded its bed target. *Id.* DSHS then began "wait-listing" long term patients, refusing to accept short-term patients, and assessing liquidated damages against RSNs that exceeded their bed targets. CP 91; CP 1556.

#### **1. Bed Allocations and "Liquidated Damages"**

The bed allocation process began when DSHS asked the Western Washington RSNs to work cooperatively to allocate state hospital beds among themselves. CP 442-443. In 2001, when the RSNs could not agree to a distribution of beds, DSHS created a formula for allocating beds. *Id.* DSHS subsequently promulgated a regulation which incorporated the bed allocation formula. WAC 388-865-0203. The regulation authorized DSHS to assess what was termed "liquidated damages" against RSNs that exceeded their bed allocations, whenever the number of patients at WSH exceeded the overall funded capacity, or In-Residence Census ("IRC"). After DSHS adopted the regulation, its RSN contracts were amended to reference and incorporate WAC 388-865-0203. Trial Ex. 6, p. 34 of 36 (D0147602); Trial Ex. 7, p. 39 of 41 (D0135173); CP 485-486; CP 525-

526; CP 442-443; CP 485-486; CP 525-526.

“Liquidated Damages” were calculated by multiplying the hospital bed day rate by the number of beds in excess of the allocation established by WAC 388-865-0203. During the relevant time period, WSH routinely admitted patients in excess of its IRC or funded capacity, which resulted in the assessment of liquidated damages against any RSN that exceeded its bed allocation. CP 441-442.

## **2. “Wait-Listing” Long-term Patients**

In June 2002, DSHS began refusing to accept custody of long-term ITA patients who were committed to WSH by the courts. CP 91. Instead, DSHS placed patients on its “waiting list.” *Id.* This practice required long-term patients to remain at PSBH until WSH agreed to take them, and forced the County to bear the costs of their continued care at PSBH. CP 92. DSHS took the position that it had the discretion to refuse long-term patients and leave them at PSBH and other facilities not certified to provide care to long-term patients, depending upon then-existing conditions at WSH, such as overcrowding or staffing constraints. CP 242. As a result, some patients waited at PSBH for periods as long as 26 days and Pierce County incurred over \$900,000 in care costs. CP 4339.

When it refused long-term patients, WSH assigned admission priority to those who were from RSNs that were at or below their bed allocations. CP 349-350. If patients were from a RSN that was above its bed allocation, they would remain on the waiting list while patients from other RSNs who were below their bed allocations were accepted. CP 354-

356. This practice had the effect of delaying treatment to the court-committed patients who met eligibility criteria – solely because they came from an RSN that happened to be above its bed limit – and without regard to the legal status or clinical needs of the waiting patients. *Id.* When this case went to trial, there were 427 long-term patients from Pierce County who had been committed to WSH and been denied admission. Trial Ex. 1. Their waiting times ranged from 2 to 26 days, during which time they remained at PSBH. Trial Ex. 1. To compound the problem, WSH often conditioned admission of long-term patients from Pierce County on Pierce County’s willingness to accept short term patients from other RSNs. CP 348-349. This “horse trading” permitted WSH to avoid admitting short-term patients while effectively forcing PSBH to accept and treat short-term patients from surrounding RSNs. *Id.*

### **3. Refusal to Accept Short-term Patients**

In early 2001, DSHS apparently decided that WSH would no longer be available to provide E&T services to Pierce County residents and began denying admission to short-term patients from PCRSN. CP 1556. Although WSH is located “within the boundaries” of Pierce County (and therefore, PCRSN), DSHS took the position that detentions or commitments to WSH do not count toward PCRSN’s obligation to provide 85% of evaluation and treatment services to short term patients. *Id.* At no time, however, did DSHS declare that PCRSN was out of compliance with its contractual requirements or take action under RCW 71.24.035(15)(e) or the remedial provisions of the contracts. CP 441-442; CP 1556.

**E. Liquidated Damages**

All liquidated damages assessed against PCRSN were withheld from the monthly payments for statutorily required community mental health services, i.e., state-only money. CP 443. When DSHS assessed liquidated damages, it cut off the sole funding source for some of the core services that were required to be provided to the mentally ill in Pierce County. CP 321-322. Because the contract required PCRSN to provide certain non-Medicaid services without regard to funding, the only way that PCRSN could pay for such services was through use of its Medicaid savings or by cutting non-mandatory services. CP 3894-3895; RP Lewis 11/16/05 at 23, 34-35; RP Lucas 11/22/05 at 46.

**F. Procedural History Relevant to Issues on Appeal/Cross Appeal**

**1. Pre-trial**

Pierce County initiated this lawsuit in November 2002 under the Administrative Procedure Act (“APA”) and for breach of contract and constitutional provisions. Plaintiffs sought declaratory, injunctive and monetary relief, as well as a writ of mandamus. *Id.* WPAS joined the lawsuit as a plaintiff on some but not all of the claims. Defendants filed counterclaims alleging breach of contract.

In the fall of 2005, plaintiffs filed several motions for partial summary judgment that are subjects of this appeal. Those motions sought the following declaratory relief: 1) to establish that DSHS had sole responsibility for caring for long-term patients; 2) to challenge the imposition of liquidated damages under the contract and under WAC 388-

865-0203; and 3) to establish that WSH is within the boundaries of PCRSN and that PCRSN may use WSH to meet its obligation to provide 85% of short-term detentions within the boundaries of PCRSN, and to dismiss defendants' counterclaim alleging breach of contract for failure to meet the 85% requirement. CP 61-85; CP 536-584; CP 1530-1541.

The court granted the first two motions. RP 9/9/05. It held that DSHS had sole responsibility under the ITA for long-term patients, and that Pierce County had no duty to provide care and treatment to such patients under Ch. 71.05 or Ch. 71.24 RCW or the RSN contracts. CP 1862. It enjoined DSHS from declining to timely accept long-term patients from PCRSN, and determined that DSHS must reimburse PCRSN for the cost of caring for long-term patients from Pierce County that it had refused at WSH. CP 1862-1863. With respect to liquidated damages, the court further held that the liquidated damages provisions of the rule and contract were not valid, and ordered the State to repay the sums withheld from the RSN. CP 1857. The court denied plaintiff's motion on the 85% rule, but granted plaintiff's motion to dismiss defendants' counterclaim alleging that plaintiffs violated the contract by failing to meet the 85% requirement. CP 2239.

## **2. Post-trial Events/Legislative Response**

After a three-week trial on the merits, the Court fixed the amount of monetary relief due to the County under its summary judgment rulings, denied relief on the contract claim, and entered a final judgment and order which reaffirmed the earlier injunction. CP 4338-4842. Defendants

thereafter filed their first motion to vacate the injunction, which the Court denied. CP 4446-4447.

On March 29, 2006, the Legislature passed L. of 2006, Ch. 333 (“Ch. 333”), which in relevant part purported to “clarify” the mental health statutes, including the CMHSA and the ITA, and to eliminate judicial remedies for the State’s violation of the CMHSA or the ITA. Ch. 333, § 101. When it adopted Ch. 333, the Legislature did not alter the DSHS’s statutory obligation to care for all patients who are committed to WSH for 90 or 180 days. Indeed, it confirmed that obligation. Ch. 333, § 107. Rather, the apparent purpose of Section 101 of the bill was to forestall “copycat” litigation on the parts of the other regional support networks (“RSNs”) whose long-term patients had been denied admission to WSH and against whom the State had assessed liquidated damages.

Despite the fact that Ch. 333 made no changes in the substantive law upon which the Court’s injunction is based, i.e., it did not transfer to the RSNs the responsibility for long-term patients, DSHS moved a second time to vacate the injunction, contending that the statute eliminated all judicial remedies for RSNs, and retroactively stripped the County of the judgment it had obtained after fully litigating the matter. CP 3300-3389. The trial court denied this motion. CP 4453-4454.

## **V. SUMMARY OF ARGUMENT**

This case arose because DSHS, charged with administering an under-funded and largely broken public mental health system, responded to conditions within the state-operated components of that system by

implementing policies and regulations that were either in excess of its statutory authority or in outright violation of state and federal law. When called to account, it weakly defends on the merits, but largely takes the position that, regardless of the wrongfulness of its actions, no judicial remedies are appropriate. As demonstrated below, however, DSHS is not only wrong on the merits, but its arguments to deny any remedies represent an unprecedented attack on the authority of the courts to compel administrative agencies to abide by the law.

## **VI. ARGUMENT IN RESPONSE TO STATE'S APPEAL**

### **A. DSHS EXCEEDED ITS STATUTORY AUTHORITY AND FAILED TO PERFORM A DUTY REQUIRED BY LAW WHEN IT REFUSED CUSTODY OF LONG TERM ITA PATIENTS.**

The record below establishes that, in more than 400 instances where the Pierce County Superior Court had expressly ordered PSBH patients remanded to WSH for long-term care, DSHS refused to abide by the court's order until it decided that it was appropriate to do so. CP 91-92; CP 2766-2872. When WSH refused to accept long-term patients committed to its care, the patients were left at PSBH, a facility that is not certified to provide care to such patients, despite the fact that the State provided no funding to PCRSN to care for them, thereby creating disruption and risks at PSBH and forcing the County to expend its funds to care for those patients. RP Stewart 11/11/05 at 69.

Pierce County challenged the State's refusal to accept long-term patients under RCW 34.05.570(4)(b), which provides: "[a] person whose

rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance.” CP 31; 43; 45; 51. More specifically, a person aggrieved by an agency’s action may seek relief under RCW 34.05.570(4)(c) and the court may enjoin the agency from unlawful action if, *inter alia*, it finds that the action was “[o]utside the statutory authority of the agency or the authority conferred by a provision of law.” RCW 34.05.570(4)(c)(ii).

The trial court found that, under the applicable statutes, DSHS is solely responsible for the custody and care of long-term ITA patients and that it had exceeded its statutory authority by refusing to accept custody of them. The trial court’s conclusion was demonstrably correct in light of the ITA’s unambiguously mandatory language, as interpreted by *In re Detention of W*, 70 Wn.App. 279, 852 P.2d 1134 (1993). In *Detention of W*, the State successfully argued that the statutory language providing that courts “shall remand” long-term patients to certified facilities is mandatory and that the ITA prohibits persons committed for long-term care from being detained in uncertified facilities—even where to do so is in the best interests of the patient. *Id.* at 281-282, 284.

Furthermore, although the Legislature amended the ITA in direct response to the trial court’s decision, it did not alter DSHS’s obligations with respect to care and custody of long-term patients, thus confirming the validity of the trial court’s interpretation. *See, Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 887-88, 652 P.2d 948 (1982) (Legislature is presumed

to be aware of judicial construction of statutes).

**1. The statutory language is unambiguously mandatory.**

RCW 71.05.320(1) provides that, if the grounds for long-term commitment have been proven and the best interests of the person would not be served by a less restrictive alternative treatment, the superior court “shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department of social and health services for a further period of intensive treatment.” In ordinary usage, the statutory terms contemplate a physical transfer of the patient to the Department for purposes of receiving long-term care: “remand,” when used with reference to a person, contemplates a physical transfer of the person. See e.g., Black’s Law Dictionary (4<sup>th</sup> Ed. 2004) (“The act or an instance of sending something (such as a case, claim, or person) back for further action.”). The ordinary meaning of “custody” is “immediate charge and control (as over a ward or a suspect) exercised by a person or an authority.” Merriam Webster On-Line Dictionary, available at: <http://www.m-w.com/cgi-in/dictionary?book=dictionary&va=custody&x=10&y=14>.

*Detention of W* held that this language is mandatory and nondiscretionary, such that the superior court was without authority to order a 90-day ITA patient, who was quadriplegic and needed care not available at WSH, to be committed to Harborview Medical Center. 70 Wn. App. at 283-284. The court said “ ‘[s]hall’ is mandatory except under very unusual circumstances.” *Id.* at 284; see also *Kanekoa v. Washington State Dept. of Social & Health Services*, 95 Wn.2d 445, 448 (1981)

(“Presumptively, the use of the word ‘shall’ in a statute is imperative and operates to create a duty rather than to confer discretion.”). Therefore, as *Detention of W* holds, “RCW 71.05.320 by its explicit language does not permit a person committed for 90 days of intensive treatment to be remanded to a facility that has not been certified by DSHS for 90 day treatment.” 70 Wn. App. at 284. Because WSH is the only facility that could provide long-term care, the plain meaning of the statute is that once a court has determined a person needs long-term care and that there is no less restrictive alternative, that person is transferred (“remanded”) to the custody of DSHS. Nothing in the statutory language and nothing in the Court’s orders permitted DSHS to temporize its obedience to the court’s order.

In this regard, DSHS mistakes the import of *Pierce County I*. In that case, DSHS unsuccessfully argued that “immediately” did not mean “immediately” in the context of RCW 71.05.170, which requires evaluation and treatment facilities to immediately accept persons detained for 72 hours. Having failed in that argument, DSHS now argues that the absence of the word “immediately” with regard to long-term patients means that it has discretion to refuse patients until it deems conditions at WSH are right. DSHS Brf. at 36. This argument fails, for several reasons. First, the trial court did not order DSHS to “immediately accept” long-term patients. Rather, it ordered that they be “timely accepted,” a concept which it defined in the injunction in a manner consistent with the long-standing practice regarding orderly transfer of patients between PSBH and WSH. CP 1863. The trial court’s order was also consistent with DSHS’s position in *Pierce Cty. I* regarding its obligation to

honor court orders. In that case, DSHS agreed that it was obligated to accept all patients committed to its custody by a court, even when it would exceed its capacity by doing so. 97 Wn.2d at 266-267.

Until it began the challenged practice of wait-listing long-term patients at WSH in June 2002, it was DSHS's practice to accept court-ordered patients on the day that their commitment orders were entered. CP 92. No change in the law triggered DSHS's adoption of the practice of wait-listing. Rather, the change was purely the result of a shortage of beds and staff at WSH. CP 951; CP 334; CP 339. *Pierce County I* is directly relevant with regard this rationale, because it rejected DSHS's argument for implied discretion to reject patients based on capacity issues, stating, "It should be obvious that every such facility has a capacity beyond which it cannot perform these functions-at least not 'immediately.' Yet nothing is said in the statute or regulations about capacity." *Id.* at 268. This statement is equally true regarding short term detentions or long-term commitments.

DSHS is unable to identify any specific statutory language that modifies the interpretation placed on RCW 71.05.310(1) by *Detention of W*.<sup>12</sup> Indeed, there is no statutory language to suggest, let alone require,

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<sup>12</sup> DSHS's reliance, at p. 40-41 of its brief, on "provisos" in two budget bills (L. 2001, 2<sup>nd</sup> Ex. Sess. ch. 7, § 204(2)(c) and L. 2002, ch. 371, § 20-4(2)(c)), is unavailing for two reasons. First, such "proviso" language cannot amend substantive law. *Washington State Legislature v. Locke*, 139 Wn.2d 129, 985 P.2d 353 (1999). Second, the language in question does not support DSHS's position. The provisos address the goal of reducing state hospital population by providing additional community services for patients already committed to the state hospitals but who no longer require in-patient care and are ready for discharge. These provisos do not authorize state hospitals to reduce their census by ignoring court orders with respect to newly committed patients.

that when a superior court judge,<sup>13</sup> acting in the name of the State of Washington, commits a patient to a state hospital for long-term care, DSHS has discretion to leave that patient in a county institution that is not certified to provide the care that the superior court has ordered.

Consequently, DSHS advances a series of arguments based on supposed legislative intent and public policy. Those arguments fail when examined in context. DSHS first argues that the intent of the Legislature would be frustrated by a “literal reading” of the statutory language (DSHS Brf. at 38)<sup>14</sup> and therefore that RCW 71.05320 should be construed to confer “discretion” on its part to do what committing courts cannot; *i.e.*, to hold long-term ITA patients in uncertified facilities until DSHS determines that it is in the best interests of the state mental health system to accept them at WSH. DSHS Brf. at 33-34. This startling invitation to rewrite the statutes should be rejected. To accept it would permit DSHS, in its sole discretion, to down-stream the costs of an under-funded state mental health system to the counties.

As DSHS points out, the Legislature intended the maximum

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<sup>13</sup> Superior Court judges are state officers, not county, officials. *Washington State Council of County and City*, 151 Wn.2d 163, 167, 86 P.3d 774 (2004) (citing *State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940)).

<sup>14</sup> For this reason, DSHS is wrong to rely on *State ex re Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 2, 43 P.2d 4 (2002). Under the approach adopted in that case, “plain meaning is still derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Id.* at 11 (emphasis supplied). This rule does not permit courts to ignore plain language of a specific statute based on “legislative intent” or policy not clearly expressed in other relevant statutory language.

amount of integration between the procedures and services authorized under the ITA and CMHSA. (DSHS Brf. at 39-40, *citing* RCW 71.05.025). This statutory scheme quite clearly contemplates, however, that DSHS is solely responsible for providing in-patient care to long-term patients.<sup>15</sup> Accordingly, the contracts between DSHS and PCSRN contain no provisions regarding care of in-patients following a long-term commitment and no funds were provided to PCSRN to provide long-term in-patient care. CP 88; CP 122; CP 127; CP 213; CP 440.<sup>16</sup> Thus, no discontinuity or lack of integration is created by giving RCW 71.05.310(1) its literal, long-standing and commonly understood meaning.

Additionally, a requirement that long-term in-patients be cared for exclusively at state hospitals or other certified facilities is perfectly consistent with the statutory mission of the state hospitals to “become clinical centers for handling the most complicated long-term needs of patients with a primary diagnosis of mental disorder.” RCW 72.23.025(1).<sup>17</sup> Discontinuity and disruption arise, however, when DSHS

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<sup>15</sup> In specifics, RCW 71.05.025 requires only that RSNs insure that there is consultation between “resource management services” [defined in RCW 72.24.025(12)] and CDMHPs or evaluation and treatment facilities to make sure appropriate information regarding history and current treatment is appropriately shared. Nothing in this section indicates that RSNs have legal or financial responsibility for long-term patients.

<sup>16</sup> PCSRN received funds under its contracts to administer the involuntary commitment process, to provide some community care and short-term in-patient care, and to assist in finding placements for patients ready to be discharged from WSH, but received no funds for long-term in-patient care. RP Dula 11/14/05 at 38.

<sup>17</sup> An order remanding a person to the custody of the Department for long-term care follows a judicial proceeding in which it has been determined the person is (a) suffering from a mental disorder; (b) despite intensive treatment, presents a likelihood of serious harm to self or others or presents a substantial likelihood of repeating felonious acts; and (c) there is no less restrictive

requires long-term patients to be held in facilities not certified or designed to care for them.

Perhaps recognizing that its policy arguments lack merit, DSHS's final argument attempts to make something out of nothing, asserting that the lack of any reference to responsibility for long-term in-patient care in its contracts with PCRSN necessarily implies that Pierce County assumed custodial and financial responsibility for these patients until such time as DSHS unilaterally determines to accept them. DSHS Brf. at 42-43. Read in context of the applicable statutes, however, the contracts' silence on long-term care cannot be taken as implied authority for a unilaterally determined "transition period" between short-term and long-term in-patient care. Rather, the contracts must be consistent with the governing statutes, under which DSHS is the state mental health authority and all functions not assumed by RSNs default to it. And, as has been demonstrated, the ITA provides a "bright-line" test whereby the patient becomes the responsibility of DSHS upon entry of a long-term commitment order.<sup>18</sup> Thus, there is no basis for DSHS's argument that contractual silence can be turned into a contractual assumption of the DSHS's statutory responsibilities.

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alternative to long-term detention. RCW 71.05.030; RCW 71.05.310; RCW 71.05.280; RCW 71.05.320.

<sup>18</sup> Similar shifting of custodial responsibility to the State is familiar and accepted in Washington. See *Pierce County v. Western State Hospital*, 97 Wn.2d 264, 269, 644 P.2d 131 (1982), citing *Clark County Sheriff v. Department of Soc. & Health Servs.*, 95 Wash.2d 445, 626 P.2d 6 (1981).

**2. The Legislature has rejected DSHS's position.**

DSHS's remaining argument for ignoring the literal meaning of RCW 71.05.320 is based on its perceptions of appropriate public policy; *i.e.*, that costs of overcrowding and under-funding at the state hospitals are appropriately shifted to the counties because to do otherwise permits RSNs to avoid their contractual responsibility to provide appropriate levels of community-based care. State's Brf. at 34-35. This argument is ill-founded, in that DSHS has other remedies under applicable statutes and its contracts if RSNs fail to perform.<sup>19</sup> Moreover, it is an argument that should be addressed to the Legislature, which created the statutory system from which DSHS's alleged problem arises and is responsible for funding it. As the Supreme Court recognized in *Pierce County I*,

[M]uch as the courts may sympathize with the institutions which have to bear the frustrations and discomforts of overcrowding, and the patients who go untreated or poorly treated, the problem is one which can be solved only by the legislature, as it is one of providing for creation and funding of adequate facilities.

97 Wn.2d at 272.

In this case, however, the "problem" was called to the Legislature's attention by DSHS. In 2006, in direct response to this lawsuit, the Legislature adopted a number of amendments to the ITA and CMHSA, but it did not authorize care of long-term ITA patients at

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<sup>19</sup> If, as it has suggested, DSHS has a case that Pierce County is not performing its responsibilities under its RSN contract, it has available remedies under the CMHSA, including taking over those responsibilities of PCRSN. RCW 71.24.35(4). DSHS has never taken the actions authorized by statute, however, because it would be required to prove its case, rather than simply make allegations.

uncertified facilities, even temporarily. To the contrary, rather than authorizing DSHS to refuse those patients, it appropriated funds to expand capacity at the state hospitals. Supplemental Budget, Laws of 2006, Ch. 372, § 204(2)(d) and (5)(b). Thus, it is clear that the Legislature has affirmatively rejected the idea that DSHS can refuse to accept long-term patients, in its “discretion,” as a means of managing state hospital population.

**B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ISSUING AN INJUNCTION.**

Ignoring the ancient maxim “there can be no wrong without a remedy,”<sup>20</sup> DSHS makes a series of arguments to establish that, even if the trial court’s reading of the statutes was correct, it was error nevertheless to order the department to comply with the law. Such a remedy is, of course, precisely what the APA specifies in cases where an agency has failed to perform a duty required by law. *See* RCW 34.05.574(1)(b) (“In a review under RCW 34.05.570, the court may ... order an agency to take action required by law.”). A trial court’s decision to grant an injunction and its decision regarding the terms of the injunction are reviewed for abuse of discretion. *Kucera v. State, Dept. of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63, (2000). Because DSHS made it perfectly clear that, absent an injunction, it intended to go on violating the law, the trial court had no choice but to issue an injunction. Because that order was

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<sup>20</sup> *Epley v. Department of Labor and Industries*, 91 Wash. 162, 166, 70 P.2d 1032 (1937).

authorized under the APA, and carefully crafted to address the balance of harms, it did not constitute an abuse of discretion.

**1. Pierce County did not have an adequate remedy at law.**

DSHS strains credulity when it argues that an injunction was inappropriate because Pierce County had an adequate remedy at law. DSHS Brf. at 45-46. While it is true that Pierce County recovered the unreimbursed costs PCRSN had incurred up until the time of trial, DSHS maintains on appeal that the monetary award should be reversed and that the Legislature has prohibited any future awards. DSHS Brf. at 56. DSHS cannot have it both ways: either it must concede that the monetary remedy was appropriate or abandon its argument that an injunction is barred by the existence of a monetary remedy.

Assuming that the monetary remedy stands, DSHS provides no basis for this Court to hold that an order requiring DSHS to take action required by law is barred by the prospect that Pierce County might recover additional compensation in a future proceeding. Indeed, the proposition advanced by DSHS is absurd on its face: it is akin to saying that a person who has shown entitlement to damages as a result of a past civil rights violation and who has also shown a likelihood of being subjected to the same illegal conduct in the future cannot obtain an injunction against future violations because a legal remedy in the form of additional damages is available. It is well-recognized, however, that damages are not an adequate remedy where an injury is continuing in nature. *Kucera* at 210-211, *citing* 15 Lewis H. Orland & Karl B. Tegland, *Washington Practice:*

*Trial Practice, Civil* § 646, at 468-69 (1996).

Furthermore, the argument that monetary reimbursement is an adequate remedy for all harm resulting from DSHS's actions ignores the character of Pierce County's claims. Pierce County sued as *parens patriae* on behalf its citizens, including citizens who may be involuntarily committed, to enforce their statutory rights. CP 43-44. The Supreme Court has specifically recognized that counties have standing to sue to vindicate the rights of their citizens in this manner. *Pierce Cty. I* at 272. Pierce County's citizens who may be committed for long-term care have a right to adequate treatment in a certified facility. PSBH patients who have been remanded, and the public in general has a right to expect that there will be sufficient E&T beds available for the acutely mentally ill. Thus, while it is true that wait-listed patients received adequate care while at PSBH, that fact is irrelevant to the question of whether the trial court appropriately exercised its discretion to enjoin further violations of the law.

**2. The trial court appropriately balanced the public interest and the potential harm.**

DSHS's claim that the trial court abused its discretion by ordering acceptance of long-term patients from PSBH within a reasonable time after entry of a remand order mostly repeats its arguments with respect to the supposed-scope of its duty under the ITA. DSHS Brf. at 46-47. In addition, however, DSHS argues that the injunction "ignored the interests ... of all mentally ill patients needing admission to WSH." *Id.* at 46. This

argument is more than a little disingenuous.<sup>21</sup> First, the trial court (at DSHS's request) limited the scope of the injunction to Pierce County patients. CP 1863. Second, it permitted DSHS to continue wait-listing until WSH had capacity to handle additional patients; the trial court stayed the injunction for 60 days (nearly 90 days from the date of its oral decision) in order to give DSHS time it requested to re-open a unit at WSH. CP 1864. When a single ward proved to be inadequate, DSHS unilaterally and without notice again began wait-listing patients. CP 2272-2273. When Pierce County sought to have DSHS held in contempt, the trial court gave DSHS another 90 days to do whatever was necessary to timely accept PSBH patients. CP 4445. DSHS, with legislative approval, choose to re-open more beds. These circumstances are hardly indicative of an abuse of discretion. To the contrary, it is clear that the trial court conscientiously balanced the harms asserted by WSH against the rights of Pierce County and its citizens.<sup>22</sup>

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<sup>21</sup> For example, DSHS cites, as evidence of impact of the injunction, materials that it offered in connection with a hearing that occurred months before the injunction took effect. DSHS Brf. at 47 (citing record of September 30, 2005 hearing).

<sup>22</sup> DSHS's "bad faith" argument is equally unavailing. Below, it argued that, after the injunction was entered on September 9, 2005, PCRSN acted in bad faith by increasing the number of long-term patients who were committed to WSH. CP 2393. At the same time, according to DSHS, PCRSN failed to facilitate discharges from WSH, allegedly resulting in further crowding at WSH. CP 2391-92. Putting aside for the moment the fact that all such patients were committed to WSH by the Superior Court, and not by PCRSN, the record is clear that the number of long-term patients at WSH from Pierce County did not significantly change after the injunction was entered. CP 1840-41; CP 2402-2403. PCRSN maintained the same efforts to divert patients from WSH and facilitate discharge. CP 2403; CP 2410. The average number of long-term patients committed monthly from PCRSN was the same as it had been in the months leading up to the injunction, i.e., 159 and 155. CP 3727-3728. PCRSN's rate of utilization also was considerably lower in the last four months of 2005 than it had been for the same period in 2004. CP 2275. In fact,

**3. The injunction did not violate the Separation of Powers doctrine.**

DSHS next contends that the issuance of an injunction requiring the department to perform its statutory duties was an abuse of discretion because the trial court necessarily required it to violate the Budget & Accounting Act (RCW 43.88.290) by expending funds in excess of those appropriated by the Legislature, and violated the Separation of Powers doctrine by requiring the Legislature to appropriate additional funds for expanded operations at WSH. DSHS Brf. at 48-52.

This argument is mistaken, for several reasons. First, it ignores the actual content of the injunction, which ordered nothing more than that DSHS to perform its statutory duties. CP 1863.<sup>23</sup> Second, DSHS has never submitted an iota of proof that it in fact was required to violate the Budget & Accounting Act by expending funds for added beds. To the contrary, in the fall of 2005 when it undertook to re-open a ward at WSH, DSHS presumably followed statutory procedure to ask the Governor for

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the number of long-term patients between September and December 2005 was far fewer than for the same period the previous year: 673 versus 730. CP. 2402; CP 2275. Moreover, PCRSN's bed allocation decreased in July 2005 from 157 to 149 between September and October. CP 3727. Accordingly, the same number of long-term patients at WSH as in the previous year would appear as PCRSN further exceeding its bed target.

DSHS's finger pointing is even more absurd in view of its own conduct during the same period. The wait list for admission to WSH increased dramatically after the Court delayed implementation of the injunction to allow DSHS to develop a plan for accommodating extra patients, jumping from 5 patients in September 2005, to 12 in October, to 22 in November and 6 for the first 9 days in December. CP 2402.

<sup>23</sup> While the order denying Pierce County's contempt motion requires DSHS "to do whatever is necessary to timely accept [Pierce County] patients, including opening an additional ward..." the source of this language was DSHS itself, which argued that it should not be held in contempt, because it needed more time to add more capacity at WSH. CP 2686-2687.

emergency authority to expend additional funds. *See* RCW 43.88.250 (authorizing expenditure of funds in excess of appropriations “for “carrying on of the necessary work required by law of any state agency.”) And, in 2006, the Legislature, by supplemental appropriation, provided funds for additional beds. Therefore, there was no violation of the Budget & Accounting Act. Supplemental Budget, Laws of 2006, Ch. 372, § 204(2)(d) and (5)(b).

Third, DSHS’s effort to place far-reaching restrictions on the constitutional and statutory authority of the courts is not supported by the single case it cites. *Hillis v. Dep’t. of Ecology*, 131 Wn.2d 373, 389-90, 932 P.2d 139 (1997) involved a court order requiring the Department of Ecology to expedite the processing of groundwater permit applications. In order to comply with the order, the department would have been required to add staff in excess of what the Legislature had specifically authorized. Overturning the injunction, the Supreme Court reasoned that, because the Legislature had not placed any statutory limit on the length of time to process applications, the department had not violated its statutory duty where the time for processing applications fell within the department’s discretion. *Id.* at 387. *Hillis* has no relevance to this litigation, because unlike the statutes at issue there, RCW 71.05.320(1) creates a non-discretionary mandatory duty to accept patients remanded for long-term care under the ITA. *In re Detention of W, supra.*

Cases decided after *Hillis*, which DSHS does not mention, confirm that it is not a violation of separation of powers for a court to order an

agency to comply with mandatory statutory requirements, even if the result of compliance is a request to the Legislature for additional funding. *Coalition for the Homeless v. DSHS*, 133 Wn.2d 894, 900, 949 P.2d 1291 (1997) upheld an injunction requiring DSHS to provide statutorily mandated child welfare services. Unlike *Hillis*, and similar to the instant case, the relevant statute in *Coalition for the Homeless* required DSHS to “develop and implement a coordinated plan for providing services to the state’s homeless children.” *Id.* Rejecting arguments by DSHS and dissenting justices that an order requiring compliance with this statute was barred by *Hillis*, *Coalition* states: “[c]ourts will not interfere with the work and decisions of an agency of the state, so long as questions of law are not involved, and *so long as the agency acts within the terms of the duties delegated to it by statute.*” *Id.* at 913 (emphasis supplied). Because DSHS “was not acting within the terms and duties delegated to it by RCW 74.13.031(1)” an order requiring DSHS “to perform its duty according to professionally accepted procedures and standards, did not interfere with the Department’s ability to use its discretion in creating a reasonable, adequate plan that would satisfy the requirements of RCW 74.13.031(1).” *Id.*

Similarly, a broad application of *Hillis* was expressly rejected in *McGowen v. State*, 148 Wn.2d 278, 297, 60 P.3d 67 (2002), a case involving the Legislature’s failure to appropriate funds to pay for cost of living increases to all public school employees as required by a voter initiative. Explaining the limited scope of *Hillis*, *McGowen* explained

that, where the state had acted under a “mistaken” interpretation of the statutes, it was the court’s constitutional obligation to correctly interpret the law and that whether an appropriation would be required to rectify that mistake is “unrelated to the issue we decide, i.e., it has nothing to do with determining the meaning of the language in the initiative.” *Id.* at 278. Here as well, because the trial court’s order simply required DSHS to meet its statutory obligations, there was no violation of the separation of powers doctrine.

**C. POST-JUDGMENT STATUTORY AMENDMENTS DID NOT REQUIRE VACATION OF THE INJUNCTION.**

Five months after entry of a final judgment, DSHS moved to vacate the injunction regarding long-term ITA patients, based on the claim that L. 2006, Ch. 333 (“Ch. 333”) deprived Pierce County of any remedy. The trial court correctly denied the motion to vacate for several reasons. First, Ch. 333 does not alter DSHS’s obligation to accept long-term ITA patients. Second, Ch. 333, by its terms, does not apply to this case. Third, if Ch. 333 applies to this case, it is unconstitutional because retroactive interference with a prior judicial interpretation of a statute violates the separation of powers doctrine and because Ch. 333 violates the subject-in-title rule and single subject rule of Article 2, Section 19 of the Washington Constitution.

**1. Ch. 333 denies previously authorized Judicial Remedies.**

Ch. 333, §§ 103 and 303, codified as RCW 71.05.026 and RCW

71.24.370, each state:

(1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after March 29, 2006.

(2) Except as expressly provided in contracts entered into between the department and the regional support networks after March 29, 2006, the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state or state agencies for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.

(3) This section applies to counties, regional support networks, and entities which contract to provide regional support network services and their subcontractors, agents or employees.

Pierce County's action was brought in part under the APA, which provides for judicial review of agency actions. RCW 34.05.574. At the time this action was commenced, the CMHSA, RCW 71.24.035(15)(e), explicitly authorized RSNs to commence a review action under the APA if DSHS found an RSN to be out of compliance with its contracts and withheld funds on that basis.<sup>24</sup> Consistently, the contracts themselves contained a venue provision which acknowledged the right of the RSNs to seek judicial remedies to enforce their rights under the contract. CP 3507, CP 3510-11; CP 3515. Pierce County sought a declaration of its rights

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<sup>24</sup> Former RCW 71.24.035(15)(e) provided: "The secretary shall [d]eny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW."

under these contracts, pursuant to RCW 7.24.020.<sup>25</sup> Thus, Ch. 333 purports to deny rights of access to the courts granted by other statutes, including the APA, the Declaratory Judgments Act (Ch. 7.24. RCW), and RCW 4.92.010, as well as under common law.

**2. In Order to Avoid Unconstitutionality, Ch. 333’s reference to “Claims” should not be construed to apply to this Case.**

It is a basic rule of judicial restraint that courts should, if reasonably possible, construe legislative enactments to avoid issues of constitutionality. *American Discount Corp. v. Shepherd*, 129 Wn.App. 345, 353, 120 P.3d 96 (2003). Here, DSHS urges a construction of Ch. 333 that raises obvious constitutional problems, discussed in Part VI.C, below. DSHS’s construction is not compelled by the statutory language, however. Indeed, there is another reasonable construction that avoids these constitutional problems. The Court should adopt it.

**a. Plaintiffs did not have any “claims” against the State as of March 29, 2006.**

Ch. 333 applies to “claims” against the State that existed as of March 29, 2006 or arose thereafter. A “claim” is an assertion of liability, which is synonymous with a cause of action or a demand for compensation. *See, Robinson v. Superior Court for King County*, 182 Wash. 277, 279, 46 P.2d 1046 (1935); *Safeco Title Ins. Co. v. Gannon*, 54 Wn.App. 330, 335, 774 P.2d 30, *review denied*, 113 Wn.2d 1026. A

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<sup>25</sup> *See* RCW 7.24.020: “A person interested under a ...written contract ... may have determined any question or construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

“judgment,” on the other hand, is a determination of legal liability, which is the final resolution of a claim. *In re Clark*, 24 Wn.2d 105,110, 163 P.2d 577 (1945). Having obtained a final judgment in January 2006, plaintiffs did not have any “claims” as of March 29, 2006. The Legislature is presumed to be aware of judicial constructions of existing statutes when it passes new legislation. *Glass v. Stahl Specialty Co.*, 97 Wn.2d 880, 887-88, 652 P.2d 948 (1982). Accordingly, the legislature must be presumed to know that plaintiffs had no “claims” against the State when Ch. 333 was adopted, and that it would not apply to this case.

**b. Otherwise, Ch. 333 cannot be constitutionally applied to this Case.**

Although disfavored, a statutory amendment may apply retroactively if it is curative or remedial and intended to clarify rather than change the law. *See generally, Magula v. Benton Franklin Title Co.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997); *Howell v. Spokane & Inland Empire Blood Bank*, 114 Wn.2d 42, 47, 185 P.2d 815 (1990). Conversely, a statute may not be applied retroactively if it substantively changes existing law, contravenes a prior judicial construction, or if it violates a constitutional principal. *See, Overton v. Washington State Econ. Assistance Auth.*, 96 Wn.2d 552, 555, 637 P.2d 652 (1981); *Landgraf v. USI Film Products*, 511 U.S. 244, 265-66, 114 S.Ct. 1483 (1994). Additionally, a statute may not be applied retroactively if the application contravenes the public interest. *Godfrey v. State*, 84 Wn.2d 959, 966, 530 P.2d 630 (1975).

**i. Ch. 333 does not clarify any ambiguity**

An amendment is curative if it clarifies or technically corrects an ambiguous, existing statute without changing prior case law constructions of the statute. *Barstad v. Stewart Title Guaranty Co.*, 145 Wn.2d 528, 537, 39 P.3d 984 (2002). Curative amendments will be given retroactive effect if they do not contravene any judicial construction of the statute. *In re Personal Restraint of Stewart*, 115 Wn.App. 319, 75 P.3d 521 (2003). *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 832 P.2d 1303 (1992). The amendment must be “clearly curative” for it to be retroactively applied.

Washington courts distinguish between amendments that clarify ambiguous statutes and amendments that substantively change unambiguous statutes. *In re Personal Restraint of Stewart* at 339. The Court of Appeals explained the difference as follows:

“Legislative enactments which respond to judicial interpretations of a prior statute, and which materially and affirmatively change that prior statute, are not clarifications of original legislative intent. Rather such enactments are amendments to the statute itself.”

*Id.* at 340. Courts are not bound by the Legislature’s characterization of an amendment as “curative:”

The fact that amendments, or their legislative history, state that, by enacting them, the legislature intended to ‘clarify’ the law does not, in and of itself, make the amendments curative. If a change effected by an amendment is substantive, the general rule of prospective application applies.

*Id.*

In this case, there was no ambiguity in the existing law with regard to the right of a county or its RSN to seek judicial remedies under the

APA, the contracts, or common law. Therefore, Ch. 333 cannot be read to merely resolve ambiguities in the original statute. Instead, it purports to remove judicial remedies that were previously and undisputedly available to those who contracted with DSHS. Under any reasonable reading of the statute, the legislative changes effected by CH. 333 are not “curative” or remedial. Instead, if read to apply to this case, Ch. 333 would contravene a prior judicial construction of an unambiguous statute and substantively change the law. As such, it cannot be applied retroactively.

**ii. Ch. 333 contravenes an earlier judicial construction.**

Separation of powers issues arise when legislation is passed that contravenes an existing judicial construction of a prior version of the statute. *American Discount Corp. v. Shepherd*, 129 Wn.App. 345, 355-56, 120 P.3d 96 (2005); *Personal Restraint of Stewart*, 115 Wn.App. 319, 339, 75 P.2d 521 (2003). In *Stewart*, the Court considered retroactive application of statutory amendments. A prior decision had held that a statute allowed only the courts, and not the Department of Corrections, to impose special probation conditions. The following year, the Legislature amended the statute to state that it would apply retroactively and that it was clarifying DOC’s authority to impose those conditions since its initial enactment. The amendment was in direct contravention of the Court’s construction of the statute before the amendment. The *Stewart* court found that the Legislature was attempting to overrule the prior judicial decision and held that retroactive application of the amendments would violate the separation of powers doctrine because the legislative branch of

government cannot retroactively overrule a judicial decision which authoritatively construes statutory language. *Stewart*, 115 Wn.App. at 335.

Similarly, in *American Discount*, as here, the Legislature attempted to substantively change a statute after a court had adjudicated rights under the statute, and it attempted to apply the changes retroactively. The court refused to permit the statute to be applied retroactively. In words that could apply equally to this case, it stated:

Notwithstanding any legislative intent to apply this amendment retroactively, the separation of powers doctrine prevents the legislature from retroactively changing a statute in contravention of a judicial construction of the original statute, and the [2006] amendments may only have prospective application.

*Id.*, at 356.

Here, the trial court held that Pierce County had judicial remedies under the APA, its contracts, and common law. It further held that under the ITA and CMHSA, the DSHS has sole responsibility for the care of long-term patients committed to WSH, and must timely accept all patients committed to its care. Only after the Court's ruling was reduced to final judgment did the Legislature amend the mental health statutes to bar the RSNs from pursuing judicial remedies for DSHS's statutory and contractual breaches. If read to apply to cases already reduced to final judgment, this statute would blatantly violated the separation of powers doctrine, and therefore would be unconstitutional. "Any attempt by the Legislature to contravene retroactively this Court's construction of a

statute "is disturbing in that it would effectively be giving license to the legislature to overrule this court, raising separation of powers problems." *Magula at 182.*

**iii. Ch. 333 invades the province of the Judiciary.**

By asserting the intent of the 1989 Legislature, the 2006 Legislature invaded the role of judiciary when it (contrary to the actual language of the original act) stated that the 1989 Legislature intended to limit judicial remedies.<sup>26</sup> This is precisely the type of legislation that the courts in *Stewart* and *American Discount Corp.* found to violate the separation of powers doctrine because it legislatively overrules a judicial decision. In addition, this determination of the prior legislature's intent constitutes a judicial determination rather than a legislative finding, which also violates the separation of powers requirement. *City of Tacoma v. O'Brien*, 85 Wn.2d 266, 271, 134 P.2d 114 (1975). Our Supreme Court has explained the difference between a legislative determination and a judicial determination as follows:

A judicial inquiry investigates, declares and enforces liabilities

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<sup>26</sup> Ch. 333, § 101(2), set forth following RCW 71.24.016, states:

In enacting the community mental health services act, the legislature intended the relationship between the state and the regional support networks to be governed solely by the terms of the regional support network contracts and did not intend these relationships to create statutory causes of action not expressly provided for in the contracts. Therefore, the legislature's intent is that, except to the extent expressly provided in contracts entered after the effective date of this section, the department of social and health services and regional support networks shall resolve existing and future disagreements regarding the subject matter identified in sections 103 and 301 of this act through nonjudicial means.

as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter.

*Id.* at 272.

**iv. Ch. 333 violates the Subject-In-Title Rule.**

Article 2, Section 19 of the Washington Constitution requires the subject of an enactment to be stated in the title. It provides: “No bill shall embrace more than one subject, and that shall be expressed in the title.” The purpose is to prevent grouping of incompatible measures as well as to inform members of the legislature on the subject matter of the measure they are voting on. *Washington Ass’n of Neighborhood Stores v. State of Washington*, 149 Wn.2d 359, 371, 70 P.3d 920 (2003). The title complies with the Constitution if it gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law. *Id.*

Ch. 333 was entitled:

“An Act Relating to specifying roles and responsibilities with respect to the treatment of persons with mental disorders; amending [portions of Chs. 71.24, 72.23 and 71.05]; reenacting and amending RCW 71.24.025 and 71.24.035; adding a new section to chapter 71.24; adding a new section to chapter 71.05 RCW; creating new sections; repealing RCW 71.05.550; providing an effective date; and declaring an emergency.

Although the text of the bill specifically references the APA, Ch. 333’s title utterly failed to give notice that the bill effectively amends the APA, RCW 4.92.010, RCW 36.01.010, RCW 7.24.010, and RCW 7.24.020. Worse, the bill makes no mention whatsoever of Chs. 36.01, 7.24, or 4.92 RCW either in the body of the bill or in its title, even though,

as already explained, Ch. 333 amends each of those laws. The County submits that this omission is not a mere oversight, but rather, a deliberate effort to avoid scrutiny by the legislative committee responsible for administrative law and the APA.

When evaluating the sufficiency of a title under Article 2, Section 19, a court compares the title to the text of the enactment to determine whether a subject in title violation exists. In *Washington State Grange v. Locke*, 153 Wn.2d 475, 105 P.3d 9 (2005), the Washington Supreme Court evaluated the ballot title for an initiative requiring voter approval for any tax increase. The Court concluded that the meaning of “tax” within the body of the bill was more expansive than its ordinary meaning. Striking down the initiative as violative of Article 2, Section 19, the Court noted that the average voter would not anticipate the broader application of the initiative to fees that ordinarily fell outside the definition of a tax. *Id.* at 495.

Here, as in *Grange*, the title of Ch. 333 was insufficient to notify the average legislator that it was amending the APA, the state’s sovereign immunity, the Declaratory Judgments Act, and the authority of counties to sue and be sued. The failure to identify in the bill title the changes to the APA and those other statutes that inhere in the Ch. 333, violates Article 2, Section 19 of the Washington Constitution. *Id.*

v. **CH. 333 Violates the Single-Subject Rule of Article 2, Section 19.**

Article 2, Section 19 also requires that no bill shall embrace more

than one subject. *See Patrice v. Murphy*, 136 Wash.2d 845, 852, 966 P.2d 1271 (1998). The purpose of this prohibition is to prevent grouping of incompatible measures as well as the pushing through of unpopular legislation by attaching it to popular or necessary legislation. *Washington Ass'n of Neighborhood Stores v. State*, 149 Wn.2d 359, 368, 70 P.3d 920 (2003). When reviewing a challenge to the single-subject requirement, a court must first determine whether the title of the enactment is general or restrictive. *Id.* If it is restrictive, its constitutionally permissible scope is more limited. If it is general, there must be some rational unity between all matters included within the measure and the general topic expressed in the title. *Id.* at 370. Ch. 333 fails the single-subject requirement under either test because there is no unity between the provision of mental health services and the APA, the state's sovereign immunity, or the other laws affected by the amendment.

A general title is broad, comprehensive and generic as opposed to a restrictive title that is specific and narrow. *Id.* at 368. Ch. 333 is entitled, "An act relating to specifying roles and responsibilities with respect to the treatment of persons with mental disorders." This is a specific, narrow title rather than a generic title. Therefore, the scope of the legislation must be equally narrow and tailored. Ch. 333 fails the test for both restrictive and general titles because there is *no* relationship between mental health treatment and prohibitions on counties, RSNs and contractors from challenging the lawfulness of DSHS actions under the CMHSA, nor is there any role between mental health treatment and the statutes authorizing

persons and counties to sue the state in superior court. “[R]ational unity must exist among all matters included within the measure and the general topic expressed in the title.” *Id.* at 370. Even if the Legislature has the authority to close the statutory route for access to the courts, the exercise of sovereign immunity and the workings of the APA are clearly different subjects from the rest of the Act. Accordingly, SSSB 6793 violates both the single subject rule and the subject-in-title rule of Article 2, Section 19 and must be invalidated as unconstitutional.

**D. THE TRIAL COURT PROPERLY HELD DSHS FINANCIALLY RESPONSIBLE FOR LONG-TERM PATIENTS COMMITTED TO WSH**

After having found that PCRSN incurred expenses associated with caring for the long-term patients, the trial court ordered DSHS to reimburse PSBH for its costs of caring for those patients. DSHS challenges this aspect of the judgment based on the argument that Pierce County cannot recover under a theory of quasi contract or unjust enrichment because there was an express contract which, although it does not address responsibility for long-term patients, “relat[es] to the same subject matter.” DSHS Brf. at 59. This argument, which misstates both the facts and the law, is without merit.

Contrary to DSHS’s assertions, there is no express contract that addresses care of long-term patients. CP 1862; CP 4333. The case that DSHS relies upon, *Chandler v. Was. Toll Bridge Auth.*, 17 Wn.2d 591, 137 P.2d 97 (1943), holds that a party to an express contract may not sue on an implied contract related to the same subject matter if to do so is *in*

*contravention of the express contract. Id.* at 604. The contracts here do not place any obligation whatsoever on Pierce County to provide care – or to pay for the cost of care – for long-term ITA patients committed to WSH. CP 127-128; CP 129-213. Since there is no express contract that places the care of long-term patients on the shoulders of the County, the quasi contract theory does not contravene the express contract.

**1. PCRSN Is Entitled to Recover for Unjust Enrichment**

Here, the parties' conduct created a "quasi-contract." A contract implied in law arises from an implied duty of the parties not based on any contract, consent, or agreement. *Eaton v. Engelcke Mfg. Inc.*, 37 Wn. App. 677, 680, 681 P.2d 312 (1984). Recovery in quasi-contract is based on the theory of unjust enrichment. *Heaton v. Imus*, 93 Wn.2d 249, 252, 608 P.2d 631 (1980). A claim for unjust enrichment turns on whether "one retains money or benefits which in justice and equity belong to another." *Bailie Comm., Ltd. v. Trend Business Syst.*, 61 Wn. App. 151, 160, 810 P.2d 12 (1991).

The elements of an unjust enrichment claim are three: 1) a benefit conferred upon the defendant by the plaintiff; 2) an appreciation or knowledge by the defendant of the benefit; and 3) the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value." *Bailie*, 61 Wn. App. at 160. All three elements of an unjust enrichment claim are satisfied here. It is undisputed that DSHS knowingly received and accepted a benefit, at the expense of Pierce

County, by failing to accept long-term patients, thereby forcing those patients to remain at PSBH at county expense.

Each time PSBH was forced to keep a long-term patient who was refused admission to WSH, DSHS was unjustly enriched at the expense of Pierce County. Thus, absent a legal duty to the contrary, DSHS must reimburse Pierce County for the unreimbursed cost of care for those patients committed to WSH. PCRSN's right to restitution is underscored by *Chandler*, which explains that restitution is available where a person performs the noncontractual duty of another to supply necessities to a third person, or performs another's duty to a third person in an emergency. 17 Wn.2d at 603. That is exactly the situation here.

**2. The law and equity permit recovery of the costs of care**

DSHS asserts that PCRSN is not entitled to restitution because PCRSN had unclean hands and because the APA prohibits recovery of money damages. DSHS is wrong on both counts.

DSHS claims that the RSN contract required PCRSN to "avoid seeking long-term admissions," that PCRSN breached the contract, and therefore cannot recover the costs of caring for long-term patients. DSHS Br. at p. 62. This argument is undercut by two glaring problems. First there is no contractual provision that required Pierce County to "avoid seeking long-term admissions" and DSHS has cited none. Second, if Pierce County failed to perform its obligations under the contract, DSHS had several remedies available such as withholding funding (if it found PCRSN to be out of compliance with the contract), or taking over the

RSN's functions altogether. RCW 71.24.220; Trial Ex. 6 at 37-38; Trial Ex. 7 at 41. DSHS never made any findings that Pierce County was out of compliance with any of its contracts. CP 441-442; CP 1556. DSHS's "unclean hands" argument, therefore, is simply without support in the record or in the law.

DSHS's argument that restitution is barred by the APA is similarly flawed. RCW 34.05.574(3) provides that a reviewing court in an APA proceeding "may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law." In this case, the "other provision of law" under which the court ordered restitution is the law of contracts and quasi-contract, under monetary relief is expressly authorized. Thus, although the APA provides the exclusive means of reviewing agency action, it does not provide the exclusive remedy when the agency has committed a tort or breached a contract. This point is well-illustrated in *Sherman v. State*, 128 Wn.2d 164, 905 P.2d 355 (1995), where a former employee of the University of Washington challenged his dismissal under both the APA and brought common law causes of action for breach of contract and wrongful discharge. The trial court awarded relief under the APA by invalidating the agency action and also awarded damages under the common law. Clearly the law of quasi-contracts authorizes damages in situations such as these, where one party was unjustly enriched. Anything short of restitution to PCRSN would render judicial review of DSHS's unlawful action meaningless.

**3. Pierce County had no duty to amend the contract**

Finally, DSHS asserts that if the contract was silent as to long-term patients, it was Pierce County's obligation to amend the contract. This is absurd on its face. The obligation to care for long-term patients is established in RCW 71.05.320, Pierce County had no obligation to amend the contract to repeat what was clearly set forth by statute, and the case upon which DSHS hangs this argument, *Washington Ass'n of Child Care Agencies*, 34 Wn.App. 235, 660 P.2d 1129 (1983), is inapposite.<sup>27</sup>

**E. THE LIQUIDATED DAMAGES PROVISIONS OF FORMER WAC 388-825-0203 AND THE RSN CONTRACTS ARE INVALID.**

The trial court correctly ruled that the WAC 388-865-0203 and the contract provision incorporating it were invalid because DSHS had no statutory authority allowing it to withhold funds from PCRSN as liquidated damages and because its practice conflicted with the ITA and CMHSA. As such, both the rule and contractual provision are invalid.

**1. No Statute Authorized the Withholding of Liquidated Damages as provided by former WAC 388-865-0203.**

Administrative agencies do not have the power to promulgate rules that amend or change legislative enactments. *Washington Public Ports Association v. Dep't of Revenue*, 148 Wn.2d 637, 646, 62 P.3d 462 (2003); *H&H Partnership v. State of Washington*, 115 Wn.App. 164, 170, 62 P.3d

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<sup>27</sup> In *Washington Ass'n of Child Care Agencies*, the plaintiff sued solely in equity to recover for new rates to be set for services provided in the face of an express contract covering the services in question. The court found that the contract expressly set the rates for the services in question, and the agency could not ignore the express terms of the contract and sue on a theory of unjust enrichment. Here, DSHS has not identified any contract provision requiring PCRSN to provide for and pay for the services at issue.

510 (2003). A court may declare an agency rule invalid if it “exceeds statutory authority of the agency.” RCW 34.05.570(2)(c).

Former WAC 388-865-0203 purported to allocate WSH beds among the Western Washington RSNs and to authorize the MHD to assess “liquidated damages” against an RSN if it exceeded its bed allocation and the IRC exceeded the funded capacity of the hospital on any day within the fiscal year. When it adopted WAC 388-865-0203, DSHS cited six statutes as authorizing the rule: “[Statutory Authority: RCW 71.05.560; RCW 71.24.035(5)(c); RCW 71.34.800; RCW 9.41.047; RCW 43.20B.020; and RCW 43.20B.335, 1-12-047, § 388-865-0203, filed 5/31/01, effective 7/1/01].” None of these statutes even suggests that DSHS has authority to assess liquidated damages.<sup>28</sup> Indeed, DSHS conceded below that no provision of the ITA, the CMHSA or any other statute expressly authorized this practice. CP 359-362; CP 364-372; CP 394.

RCW 71.05.560 and RCW 71.34.800 confer general rulemaking power on DSHS to make rules to effectuate the intent and purposes of Ch. 71.05 RCW and Ch. 71.34 RCW (dealing with mentally ill juveniles). This general authority rule-making authority does not permit DSHS to

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<sup>28</sup> RCW 9.41.047 deals with the restoration of the right to possess a firearm after a person committed under the ITA has completed mental health treatment. RCW 43.20B.335 authorizes the Department to determine the ability of the criminally insane to pay for services. RCW 71.24.035(5)(c) requires DSHS to develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037, including i) licensed service providers; ii) RSNs; and iii) inpatient services and E&T services, resource management services and community support services. RCW 43.20B.020 authorizes DSHS to charge fees for services provided.

shift financial responsibility for long-term ITA patients from the State to the RSN by withholding funding because, as the trial court recognized, to do so conflicts with express provisions of the ITA regarding responsibility for long-term patients.

**2. WAC 388-865-0203 Conflicts with Chs. 71.05 and 71.24 RCW**

Although a rule promulgated under express agency rulemaking power is presumed valid, the rule must be reasonably consistent with the statute it seeks to implement in order to be upheld on judicial review. *Washington Public Ports*, 148 Wn.2d at 646 (2003). Rules that conflict with the governing statutes are invalid. *H&H Partnership v. State of Washington*, 115 Wn.App. 164, 62 P.3d 510 (2003) (WAC impermissibly modified governing statute setting 21-day appeal period); *Gugin, v. Sonico*, 68 Wn.App. 826, 831, 846 P.2d 571 (1993). In *Gugin*, the Human Rights Commission promulgated a rule designating it an unfair practice for an employer to discriminate against persons convicted of a crime. An employer challenged the rule as ultra vires, and the court agreed, holding that the HRC exceeded its legislative grant of authority because it created a new protected class – convicted criminals – which amounted to a legislative act.

Here, WAC 388-865-0203 not only lacked statutory foundation, it conflicted with express provisions of the statutes it is supposed to implement. As shown in Sections IV.C, IV.D.2, IV.D.3, VI.A, VI.B, VI.C and VI.D above, DSHS is solely responsible for long-term in-patient care

under the ITA. WAC 388-865-0203 was an impermissible attempt to shift that responsibility to the RSNs. In addition, DSHS is required to distribute all available resources to RSNs for their exclusive use. RCW 71.24.035 (6) and RCW 71.24.035(15)(c).

DSHS's stated justification for allocating beds and assessing liquidated damages is to make the RSNs responsible for the cost of care at WSH above and beyond the level funded by the Legislature. CP 316. The only statutory authority for withholding or denying funding to RSNs was contained in former RCW 71.24.035 (15)(e). Under that statute, DSHS could deny funding only after making a formal finding of noncompliance with the contract, *i.e.*:

The Secretary shall:

(c) Allocate one hundred percent of available resources to the regional support networks in accordance with subsection (13) of this section. Incentive payments authorized under subsection (13) of this section may be allocated separately from other available resources.

...

(e) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases regional support networks shall have full rights to appeal under chapter 34.05 RCW.

Former RCW 71.24.035(15).

DSHS has never issued a finding of noncompliance against PCRSN and nothing in these statutes otherwise permitted DSHS to withhold funds as a penalty for exceeding a bed allocation. CP 301 at 3-4.

Therefore, the only statutory basis for withholding funds from PCRSN was not applicable.

While no statute permitted DSHS to limit long-term ITA admissions, there is explicit legislation that permits DSHS to limit admissions of developmentally disabled persons to a specially designed program when funds are insufficient.<sup>29</sup> Clearly, the Legislature knew how to carve out an exception to the agency's duties based on lack of funds when it wanted to do so, and the omission of similar authority with respect to long-term ITA patients must be presumed deliberate in the face of the legislature's express allowance for developmentally disabled patients. *In re Detention of Williams*, 147 Wn.2d 476, 55 P.2d 597 (2002).

Finally, the fact that existing statutes did not permit DSHS to withhold "liquidated damages" is further confirmed by the provisions of Ch. 333, § 107 which, for the first time, authorized allocation of state hospital beds and required RSNs that exceed their allocations to "reimburse" DSHS for the costs of care.<sup>30</sup>

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<sup>29</sup> RCW 71.05.320(1) expressly permits DSHS to limit admissions to the program based on available funding by the legislature:

The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

<sup>30</sup> Subsection 6 of § 107 provides:

If a regional support network uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care. The reimbursement rate per day shall be

**3. The “Liquidated Damages” Provision in the Contracts was also Invalid.**

DSHS argues that liquidated damages should not have been invalidated because, independent of its rule, these were authorized by the contracts. The liquidated damages provision in the contract was invalid because: (a) the contract were required to be consistent with the authorizing statutes, and (b) the liquidated damages clause is, in reality, a penalty clause.

**a. The contracts were required to be consistent with the authorizing statutes.**

A term of a public contract that is contrary to the terms and policy of an express legislative enactment is illegal and unenforceable as a matter of law. *See, Tanner Elec. Co-op v. Puget Sound Power & Light Co.*, 128 Wn.2d 656, 911 P.2d 1301, (1996); *Faylor’s Pharmacy v. Dep’t of Social & Health Services*, 125 Wn.2d 488, 499 886 P.2d 147 (1994). Here, the contract provision, like the WAC that allocates beds and assesses liquidated damages, conflicts with the ITA and CMHSA. Under the subject contracts, any contractual provisions conflicting with state or federal law, was deemed amended to conform to the law. Trial Ex. 6 at 6 (p. 4 of 36); Trial Ex. 7 at 12.

The ITA and CMHSA place responsibility for the care of patients committed for 90 and 180 days exclusively in the hands of the State,

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the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

whereas the WAC and contracts purport to make the RSNs responsible for the cost of care of those patients when WSH census exceeds the IRC and an RSN exceeds its bed allocation. Furthermore, the liquidated damages provision is at odds with the purpose and intent of the ITA and the CMHSA, which is to provide effective, early intervention and treatment to the mentally ill in a community-based setting. Because liquidated damages reduce the resources available to the RSNs to provide necessary early treatment, the liquidated damages provision of the contract conflicts with the very statutes that authorize the contract in the first place.

**b. The “liquidated damages” were an illegal penalty.**

To be enforceable in Washington, liquidated damages clauses must be specifically negotiated, and must be a reasonable pre-estimate of a loss which is incapable of ascertainment or very difficult to ascertain. *Wallace Real Estate Investors, Inc. v. Groves*, 72 Wn.App. 759, 868 P.2d 149 (1994), *affirmed* 124 Wn.2d 881 (liquidated damages, which are fairly and understandingly agreed to by experienced, equal parties with a view to just compensation for anticipated loss, are enforceable in Washington); RCW 62A.2-718; *Watson v. Ingram*, 124 Wn.2d 845, 881 P.2d 247 (1994); *Restatement (Second) of Contracts* § 356 (1981).

**i. No relationship to actual damages**

Courts refuse to enforce liquidated damages if they operate as a penalty rather than as a fair estimate of uncertain damages. *Id.* The penalty situation is most obvious when the non-breaching party suffers no

actual damage as the result of the breach, yet still seeks to recover substantial sums as liquidated damages. See, *Lind Building Corp. v. Pacific Bellevue Dev'ts.*, 55 Wn.App. 70, 75, 776 P.2d 977 (1989). “[T]he fact that the parties have so designated the sum to be paid [as liquidated damages] is not necessarily controlling or conclusive. Courts looking to the intent of the parties have not hesitated to hold that express stipulations for liquidated damages were really stipulations for penalties, and vice versa.” *Management Inc. v. Schassberger*, 39 Wn.2d 321, 326-27, 235 P.2d 293 (1951). As the Supreme Court has explained:

As distinguished from liquidated damages, a penalty is a sum inserted in a contract, not as the measure of compensation for its breach, but rather as a punishment for default, or by way of security for actual damages which may be sustained by reason of nonperformance, and it involves the idea of punishment. It is the payment of a stipulated sum on breach of contract, irrespective of the damage sustained. Its essence is a payment of money stipulated as in terrorem of the offending party, while the essence of liquidated damages is a genuine covenanted pre-estimate of damages.

*Id.* at 326-27.

Here, the liquidated damages provision of the contracts operated as a penalty in purpose and in fact rather than as a reasonable forecast of damages. Moreover, the liquidated damages methodology makes no adjustments or offsets for third-party revenue for the very patients that cause the penalty to be imposed.<sup>31</sup> The record shows that DSHS intended

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<sup>31</sup> The liquidated damages provision does not provide a reasonable forecast of difficult-to-measure damages both because the “damage” is simple to calculate and because the sums assessed against PCRSN bear little relationship to “the harm” supposedly suffered by the State when the RSN exceeds its bed allocation. CP 441-42. When liquidated damages are assessed against the RSNs, the WSH daily bed rate is charged (approximately \$438), regardless of whether the patient is residing in the hospital or in a

that the liquidated damages clause in the contract operate as a penalty. CP 378; CP 388; CP 368. DSHS's representative testified that DSHS often likes to refer to the liquidated damages as an "incentive" but it is in fact a penalty. CP 388. The purpose of liquidated damages is to penalize the RSNs for exceeding their bed allocations, ostensibly to discourage the counties from filing petitions to commit patients to the state hospitals. CP 382 (describing liquidated damages as a "disincentive" to the RSNs). Even documents prepared for public discussion, and approved by former MHD director Karl Brimmer, describe liquidated damages as "penalties" against the RSNs for exceeding bed allocations. CP 411-412.

Because the liquidated damages contract provision is obviously a penalty, and the State's own employees have admitted as much, the contract term is illegal and unenforceable as a matter of law.

**ii. The Liquidated Damages Provision Was Not Negotiated.**

The evidence shows that the liquidated damages clause was never a negotiated term in the contract. In fact, DSHS informed the RSNs that it would not entertain any modifications with regard to the bed allocation

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different unit such as PALS, where the daily rate is only \$267. CP 385, 390-91. The bed day rate also fails to account for any payments received from third party payors such as Medicare. WSH receives these payments even when WSH exceeds its IRC, but MHD does not adjust the liquidated damages that it assesses against the RSNs to take into account any amounts received from third party payors. CP 383-86. Other aspects of the liquidated damage calculation make it clear that it does not reflect actual damages. The \$438 WSH bed day rate used to calculate the penalty reflects WSH's fixed costs already funded by the Legislature, which do not increase when RSNs exceed the IRC. CP 374-75; CP 382. When the number of civilly committed patients at WSH exceeds the IRC, WSH does not necessarily hire more staff or otherwise incur increased fixed costs to operate the hospital. CP 387-88. Indeed, the liquidated damages dollars go to MHD, not WSH. CP 336. Accordingly, the WSH daily rate does not reflect the true costs of care. CP 329-30.

and liquidated damages provisions. CP 440. Karl Brimmer, the Director of MHD, admitted that the liquidated damages provision of the RSN contract was non-negotiable. CP 305-307. DSHS's unwillingness to compromise on these terms led the County to sign the contract under protest. CP 440. Under circumstances such as these, the liquidated damages provision cannot be said to be a contract term that was "fairly and understandingly agreed to by equal parties with a view to just compensation for anticipated loss" as would be necessary to be enforceable. *See, Wallace Real Estate Investors v. Groves*, 72 Wn.App. 759 (1994).

**4. The Order to Refund Illegally Withheld "Liquidated Damages" was Appropriate.**

The stated intent of the ITA and CMHSA are to treat the mentally ill in the community where possible, and to encourage intervention at a time that optimizes treatment in order to avoid long-term hospitalization. *See*, RCW 71.05.010(6); RCW 71.05.012; 71.24.015; 71.24.016. When liquidated damages are assessed against the RSNs, the RSNs' ability to provide community-based care to the mentally ill is hampered by lack of resources. CP 321-323. By taking away the money that the RSNs need to provide early intervention and community-based care, mentally ill persons who cannot be effectively treated in the community end up decompensating to a point that they require hospitalization at WSH, which defeats a basic purpose of the CMHSA.

When the trial court granted summary judgment for Pierce County, it ruled that: “Pierce County is entitled to refund of the amount of liquidated damages proven at trial to have been withheld and interest thereon.” CP 1855. But for the defendants’ illegal assessment of liquidated damages, the entire amount that the State has withheld would belong to plaintiffs.

DSHS’s illegal withholding of funds to which Pierce County was otherwise entitled caused the County to reduce payments to its mental health providers, who in turn were forced to reduce services. DSHS argues, as a result, that the County suffered “no damage” and therefore was not entitled to a refund of the amounts withheld. To say that Pierce County was not aggrieved by the withholding of more than a million dollars, which plaintiffs were entitled to receive under the contract, is absurd on its face. It is like arguing that a general contractor who receives no payment under a fixed bid contract, and therefore cannot pay his subcontractors, has not been harmed and is not entitled to damages from the breaching party. If the court were to apply this theory to this case, the State would be rewarded for breaching the contract and obtaining free services at the expense of PCRSN. This is not the law of contracts in Washington, nor should it be.

## **VII. ARGUMENTS ON CROSS-APPEAL**

### **A. THE TRIAL COURT ERRED WHEN IT REJECTED PLAINTIFFS’ CLAIM THAT THE CONTRACT VIOLATED FEDERAL MEDICAID LAW.**

Pierce County contends that it is entitled to recover the amount of Medicaid funds that its contracts with DSHS required to be expended for

persons and services not covered by Medicaid (“non-Medicaid services”). At trial, Pierce County showed that DSHS had purposefully structured the contracts so as to require PCRSN to provide certain non-Medicaid services without regard to the statutory “available resources” limit under RCW 71.24.015, that DSHS did not provide sufficient “state only” funds to pay these non-Medicaid services, and that DSHS thereby intended that PCRSN would use its “Medicaid savings” (Medicaid funds not used to provide Medicaid-eligible services) to pay for non-Medicaid services. RP Dula 11/14/05 at 42, 83, 87; RP Stewart 11/10/05 at 14-30, 79-80, 83, 92-94, 101-102.

Pierce County contends that this compelled expenditure of Medicaid savings to pay for non-Medicaid services was illegal under applicable requirements of federal Medicaid law. Because the contracts stated that any provision not consistent with state and federal law shall be amended to be consistent with the law, the County was entitled to recover the amount of Medicaid savings that it was forced to expend on non-Medicaid services during the relevant contract periods. The trial court rejected Pierce County’s claim on two related grounds. First, it found that the federal government “tacitly permitted” the use of Medicaid funds for non-Medicaid services. CP 4330.<sup>32</sup> Second, it entered both findings and conclusions to the effect that the use of Medicaid savings for non-Medicaid services was “voluntary” because Pierce County knew that the

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<sup>32</sup> Perhaps recognizing the total absence of evidence on the point, it also entered a conclusion of law to the same effect. CP 4335.

amount of state-only funds was inadequate and that, as a result, it would be required to use Medicaid savings to pay for required non-Medicaid services. Because Pierce County signed those contracts with this knowledge, the trial court deemed the use of Medicaid savings to be “voluntary.” CP 4330, 4336. Accordingly, the trial court concluded that the required use of Medicaid savings for non-Medicaid purposes under the subject contracts did not violate federal “policy.” CP 4336.

The trial court’s decision should be reversed because it rests on a fundamental misapprehension of the concept of permitted “voluntary” use of Medicaid savings. In addition, regardless of whether the federal government failed to take action against DSHS and thereby “tacitly” permitted the illegal use of Medicaid funds, the contracts in question were express in their terms requiring that any illegal terms must be deemed amended to conform to the requirements of federal law. It is therefore no defense for DSHS to argue that the County signed a contract containing an illegal term.

**1. Medicaid policy prohibited DSHS from requiring PCRSN to use Medicaid funds for non-Medicaid purposes**

In 1998, the Center for Medicare and Medicaid Services (“CMS”) announced that 42 U.S.C.1396b(m)(20(A)(iii) requires Medicaid capitated payments to be spent on Medicaid eligible patients only, and that state Medicaid programs could not require managed care plans to use any savings from capitated payments to provide non-Medicaid services. Trial Ex. 45; CP 3023. CMS explained that such a requirement constituted “an

inappropriate subsidy for services for the uninsured” and is in violation of § 1903(m)(2)(A)(iii) of the Social Security Act, which states that “capitated programs are intended for Medicaid recipients.” *Id.* Rather, CMS announced that the use of savings to provide non-Medicaid services was allowed only if the contractor “voluntarily chooses” to do so. Trial Ex. 45.

In 2001, CMS notified DSHS that it was investigating concerns that Medicaid-eligible persons were not receiving services as a result of services being provided to persons who were not Medicaid-eligible in a system that was primarily funded with Medicaid dollars. Trial Ex. 49 at 620. In 2004, CMS went even further and announced that effective July 2005, RSNs could no longer use Medicaid savings for non-Medicaid purposes, whether they did so voluntarily or not. Trial Ex. 386.

**2. “Tacit” Agreement with this Practice by the Federal Government is Immaterial.**

Below, it was undisputed that, in order to provide the services required under the contracts, Medicaid funds would have to be expended for non-Medicaid services. CP 4330; RP Gunther 11/22/05 at 22-27, 52-62; RP Winans 11/17/05 at 12-13, 34; Trial Ex. 60 at 7; Trial Ex. 61 at 3. The trial court assumed that the federal government knew of this requirement (although it was difficult or impossible to know from the face of the contracts) and therefore it must have “tacitly approved” or “tacitly permitted” the practice. RP 11/23/05, p. 11; CP 4330, 4335. This finding, if it is indeed a finding of fact, is not supported by substantial evidence.

To the contrary, the record shows that, over a period of years, CMS was engaged in incremental efforts to bring DSHS's practices within the requirements of federal law. RP Winans 11/21/05 at 43-44; Trial Ex. 45; Trial Ex. 49 at 620; Trial Ex. 386. These efforts, however slow, to make DSHS conform to federal restrictions on use of Medicaid savings hardly amount to "approval" or "permission." Moreover, measured enforcement efforts cannot affect a change in federal law and, for that reason, the finding of "tacit approval" or "tacit permission" is immaterial to the legality of the contracts. The relevant question is whether the required use of Medicaid savings for non-Medicaid services violated federal law, not whether the federal government had failed to take timely enforcement action.

**3. The Trial Court erred in its Interpretation of the Federal "Voluntary Use" Requirement**

The trial court rejected Pierce County's contract claim based on its reasoning that, because the County knew before it executed the contracts that the amount of state funding was insufficient to cover the required non-Medicaid services, it had voluntarily agreed to use its Medicaid savings to pay for these services. RP 11/23/05 at 11. This rationale confuses the decision to enter into the contracts with the terms of the contracts, and does not address the relevant issue under federal law and is therefore erroneous. The relevant issue under federal law is whether the terms of the contracts required, or merely permitted, the use of Medicaid savings for non-Medicaid services. Under a correct interpretation of the applicable

federal standards, it is clear that the contracts must be deemed amended so as to allow Pierce County a truly voluntary choice with respect to the use of Medicaid savings, and to provide the County with the benefit of its Medicaid savings. The fact that DSHS presented Pierce County with the Hobson's choice whether to enter into a contract that the County believed was illegal in part, or to turn over its local mental health system to the state bureaucracy, is immaterial.

**4. Pierce County did not waive its Rights by Executing the Contracts.**

Another interpretation of the trial court's decision is that Pierce County waived any right to object to the required use of Medicaid savings by executing the contracts with knowledge that they contained illegal requirements. Whatever force such reasoning might have in the context of private contracts, it is inapplicable here because the County was entitled to rely upon the contractual term stipulating that the contract would be deemed amended as necessary to conform with federal and state law. When it signed the contracts, Pierce County was entitled to rely upon the special terms and conditions and Order of Precedence that guaranteed that the contract would be applied in accordance with all federal and state law. To hold otherwise simply encourages lawless behavior by state agencies because it permits them, in effect, to tell contractors that—if they want to do business with the state—they must waive their right to insist on compliance with federal and state laws that govern those contracts.

**B. THE COUNTY’S CLAIM CONCERNING THE “85% RULE” WAS ERRONEOUSLY DISMISSED.**

Former RCW 71.24.300(1)(d) required RSNs to assume within available resources all of the following duties: “Provide within the boundaries of each [RSN] for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to Chapter 71.05 RCW.”<sup>33</sup> Pierce County sued for a declaration that, in determining compliance with this requirement, DSHS must count short-term patients committed to WSH. CP 46-47. DSHS, in turn, sought damages from the County based on alleged failure to meet the 85% requirement. On summary judgment, although it rejected DSHS’s money claim on procedural grounds, the trial court interpreted the statute in favor of DSHS and dismissed the County’s request for declaratory relief. CP 2239. As shown below, the trial court committed an error of law in its interpretation of the statute, which this Court should reverse in order to prevent future disputes.

**1. The CMHSA Only Requires That RSNs Provide 85% of E&T Services “Within The Boundaries” Of The RSN**

Where the language of a statute is plain and unequivocal, courts must construe it according to its true intent, notwithstanding a contrary construction by an administrative agency. *Smith v. Northern Pacific Ry. Co.*, 7 Wn.2d 652, 110 P.2d 851 (1941); *Washington Fed’n of State Employees v. State Personnel Board*, 54 Wn.App. 305, 309, 773 P.2d 421

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<sup>33</sup> Laws of 2006 c 333 § 106 amended this requirement to 90%. See RCW 71.24.300(6)(c).

(1989). Here, the plain, unambiguous language of the statute indicates that PCRSN's obligation was to: "[p]rovide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW." The statute does not require that the E&T services be provided at any particular facility or facilities within those boundaries, nor does it exclude state hospitals from the mix of providers of E&T services.

This reading is consistent with one of the overarching goals of the CMHSA, which is to treat to mental health patients in their communities. See, RCW 71.24.016(1) and (2) (identifying goal of maintaining patients in their communities and associated requirement that RSNs provide services to patients within **geographic** boundaries). For most RSNs, the E&T facilities of the state hospitals are not within their geographic boundaries. If those counties sent short-term patients to the state hospitals, they would be cut off from support systems available in their communities. Pierce and Spokane counties, on the other hand, are home to the two state hospitals. In both cases, the RSNs' use of the E&T facilities at the state hospitals to provide short-term care to mental health patients is consistent with the goal that the patients be treated close to home.

**2. DSHS's Long-Standing Position Has Been That WSH Is PCRSN's E&T Facility**

DSHS has argued that the intent of the Legislature was that short-term services be provided in community facilities rather than in state

hospitals. To interpret RCW 72.23.025 to say that the state hospitals are exclusively reserved for long-term patients is not only at odds with the 85% rule, it also contrary to DSHS's long-standing position on the availability of WSH to meet E&T needs in Pierce County. As DSHS stated as recently as 2000, "**Pierce RSN was told by previous MHD administration to not build E&Ts but to utilize WSH as their E&T.**" CP 1545-46; CP 1548-1549. In addition, DSHS never made any findings that PCRSN was out of compliance with its contractual requirement abide by the 85% rule. Instead, when Pierce County commenced this action, seeking increased access to WSH, DSHS suddenly counterclaimed, alleging for the first time that PCRSN was in violation of the 85% requirement. There is no question that DSHS' original and long-held interpretation of the 85% requirement is consistent with the language of the statute. Absent a material change in the statute, DSHS should not be permitted to reverse course.

**C. THE TRIAL COURT ERRED WHEN IT REFUSED TO AWARD PREJUDGMENT INTEREST.**

Washington public policy favors prejudgment interest as an element of damages on liquidated claims. *Seattle-First Nat'l Bank v. Wash. Ins. Guaranty Ass'n*, 94 Wn. App. 744, 759, 972 P.2d 1282 (1999). Below, Pierce County presented liquidated claims for the cost of providing care to long-term patients and the amount of liquidated damages that DSHS wrongfully withheld, and the trial court entered judgment accordingly. On October 7, 2005, the Court granted plaintiff's motions for

partial summary judgment on liquidated damages and on the reimbursed costs of caring for the long-term patients, and awarded prejudgment interest on both amounts. RP 11/23/05 at 4-6. After further argument by Defendants, the trial court reversed its award of prejudgment interest on the grounds that sovereign immunity protected the State from having to pay interest. CP 4327-4328; CP 4333-4334; RP 1/20/06 at 22.

**1. The State Waived Sovereign Immunity When It Contracted with PCRSN Pursuant to Former RCW 71.24.035(15)(b)**

The general rule in Washington is that when the State enters into an authorized contract, it impliedly waives sovereign immunity and consents to being sued on the contract with the same responsibilities and liabilities as a private party. *Architectural Woods v. State*, 92 Wn.2d 521, 529-30, 598 P.2d 1372 (1979); Tegland, 15 Washington Practice Civil Procedure § 45.3, citing *Architectural Woods* (“the liability of the state on contract obligations is so clear that it has rarely been challenged”).

In *Architectural Woods*, the court found that by authorizing Evergreen State College to enter into a public works contract to build a dormitory, the State waived its sovereign immunity in regard to the transaction and impliedly consented to the same responsibilities and liabilities as a private party, including liability for interest. 92 Wn.2d at 526-527. The Court found that the State had waived sovereign immunity on the basis of the construction contract itself and two statutes: RCW 4.92.010, which waives sovereign immunity from various types of

lawsuits, and RCW 28B.10.300, which authorizes state colleges and universities to enter into construction contracts.

The State's waiver of sovereign immunity here is found in the statute that authorizes the State to contract with RSNs and the fact that DSHS entered into RSN contracts pursuant to the statute. Pursuant to RCW 71.24.035(15)(b), the Secretary of DSHS is authorized to enter into biennial contracts with Regional Support Networks, which may be public or private. In this case, the State entered into an authorized contract with PCRSN to deliver community-based mental health services. By doing so, the State consented to be sued on the contract and to be liable to the same extent as a private party, which includes liability for interest.

The trial court concluded that because the contract provision authorizing DSHS to withhold liquidated damages was invalid, and the Legislature had not authorized DSHS to enter into invalid contracts, the State had not waived its sovereign immunity by entering into the contract with Pierce County and could not be liable for interest thereon. This conclusion is clearly wrong, because under *Architectural Woods*, the waiver arises from the Legislature's authorization to contract, together with the act of contracting itself. Both elements are present here. In this case, DSHS was authorized to contract with the RSNs to provide mental health services and did enter into such a contract with Pierce County. Pursuant to the liquidated damages provision of the contract, Pierce County lost the use of nearly \$1M to which it was entitled. Pierce County is entitled to interest on the wrongfully withheld liquidated damages.

### VIII. CONCLUSION

For the reasons stated herein, the judgment should be affirmed with respect to physical and financial responsibility for care of long-term ITA patients and liquidated damages, but reversed and remanded for entry of an appropriate amended judgment with respect to the forced use of Medicaid savings, the 85% rule, and pre-judgment interest.

Respectfully submitted this 12<sup>th</sup> day of March 2007,

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# **APPENDIX A**

countries under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers. [1991 c 306 § 1; 1989 c 205 § 1; 1986 c 274 § 1; 1982 c 204 § 2.]

**Conflict with federal requirements—1991 c 306:** "If any part of this act is found to be in conflict with federal requirements that are a precluded condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the services directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies that are necessary condition to the receipt of federal funds by the state.

However, if any part of this act conflicts with such federal requirements, the state appropriation for mental health services provided to children whose mental disorders are discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program shall be provided through the division of medical assistance and no state funds appropriated to the division of mental health shall be expended or transferred for this purpose." [1991 c 306 § 7.]

**Evaluation of transition to regional systems—1989 c 205:** "(1) In order to determine the effectiveness of this act, it is necessary to have an independent evaluation of the transition to regional systems of care. The legislative budget committee shall prepare a plan to conduct a study of the effectiveness of the change in the mental health system initiated by this act. The primary goal of the study is to evaluate the progress of this act to serve support networks in meeting the statutory requirements within their boundaries by July 1, 1993. A plan of study shall include, but is not limited to, the following considerations: (a) Progress in implementing and complying with the intention of this act to create regional support networks; (b) Effect on residential commitments to the state hospitals; (c) Effect on residential options in the community; (d) Efficiency and effectiveness of delivery of services, both residential and nonresidential, in the care of the mentally ill.

(2) The plan for conducting a study, including start and completion dates, general research approaches, potential research problems, data requirements, necessary implementation authority, and cost estimates is to be provided to the appropriate policy and fiscal committees of the house of representatives and the senate by December 1, 1990. The plan may include proposals to use contract evaluators or other options for determining the most appropriate entity to complete the study, and shall identify ways to measure program progress and outcomes. The plan shall take into consideration a study completion date of December 1, 1992.

(3) In order to establish a beginning point for any future study of the effectiveness of the system changes initiated in this act, the biennial contract is signed by the department of social and health services and a regional support network, the department shall forward a copy of the contract to the legislative budget committee. [1989 c 205 § 23.]

**Effective date—1986 c 274 §§ 1, 2, 3, 5, 9:** "Sections 1, 2, 3, 5, and 9 of this act shall take effect on July 1, 1987. [1986 c 274 § 11.] Sections 1, 2, 3, 5, and 9 are the amendments by 1986 c 274 to RCW 71.24.015, 71.24.025, 71.24.035, 71.24.045, and 71.24.155, respectively.

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of: (a) A mental disorder as defined in RCW 71.05.020(2) or, in the case of a child, as defined in RCW 71.34.020(12);

oles for the recognition and certification of regional support networks. A final order was filed on January 24, 1990, effective January 23, 1990. Comprehensive community health centers: Chapter 70.10 RCW. Funding: RCW 43.79.201 and 79.01.007.

**71.24.011 Short title.** This chapter may be known and cited as the community mental health services act. [1982 c 204 § 1.]

**71.24.015 Legislative intent and policy.** It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to attain a respected and productive position in the community. This will be accomplished through programs which provide for:

- (1) Access to mental health services for adults of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly disabled, and low-income persons. It is also the purpose of this chapter to promote the early identification of mentally ill children and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;
- (2) Accountability of services through state-wide standards for monitoring and reporting of information;
- (3) Minimum service delivery standards;
- (4) Priorities for the use of available resources for the care of the mentally ill;
- (5) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county support services, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and
- (6) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders. The legislature intends to encourage the development of county-based and county-managed mental health services with adequate local flexibility to assure eligible people in need of care access to their least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care which integrate planning, administration, and service delivery duties assigned to

assessed value against the taxable property in the county to be used for such purposes: PROVIDED, That all or part of the funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal matching funds to provide and coordinate community services for persons with developmental disabilities and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state shall grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.24 and 71.28 RCW and by chapter 71A.14 RCW, all as now or hereafter amended.

The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [1988 c 176 § 9.10; 1983 c 3 § 183; 1980 c 155 § 5; 1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 8.85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

**Severability—1988 c 176:** See RCW 71A.10.900. **Effective date—Applicability—1980 c 155:** See notes following RCW 84.40.030.

**Severability—1974 ex.s. c 71:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 71 § 13.] For codification of 1974 ex.s. c 71, see Codification Tables, Volume 0.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

Chapter 71.24

COMMUNITY MENTAL HEALTH SERVICES ACT

- Sections: 71.24.011 Short title. 71.24.015 Legislative intent and policy. 71.24.025 Definitions. 71.24.030 Grants to counties for programs. 71.24.035 Secretary's powers and duties as state mental health authority, county authority. 71.24.045 County authority powers and duties. 71.24.049 Identification by county authority—Children's mental health services. 71.24.100 Joint agreements of county authorities—Required provisions. 71.24.110 Joint agreements of county authorities—Permissive provisions. 71.24.155 Grants to counties—Accounting. 71.24.160 Proof as to uses made of funds. 71.24.200 Expenditures of county funds subject to county fiscal laws. 71.24.215 Clients to be charged for services. 71.24.220 Reimbursement may be withheld for noncompliance with chapter or regulations. 71.24.240 County program plans to be approved by secretary prior to submittal to federal agency. 71.24.250 County authority may accept and extend gifts and grants. 71.24.260 Waiver of postgraduate educational requirements. 71.24.300 Regional support networks—Generally. 71.24.310 Implementation of chapters 71.05 and 71.24 RCW through regional support networks. 71.24.900 Effective date—1967 ex.s. c 111. 71.24.901 Severability—1982 c 204. 71.24.902 Construction.

**Reviser's note:** The department of social and health services filed an emergency order, WSR 89-20-030, effective October 1, 1989, establishing

such communication to the person to whom it is addressed. All persons in an establishment as defined by chapter 71.12 RCW shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370 and to voluntarily admitted or committed persons pursuant to RCW 71.05.050 and 71.05.380. [1973 1st ex.s. c 142 § 2; 1959 c 25 § 71.12.570. Prior: 1949 c 198 § 66; Rem. Supp. 1949 § 6953-65.]

**Severability—Construction—Effective date—1973 1st ex.s. c 142:** See RCW 71.05.900 through 71.05.950.

**71.12.590 Revocation of license for noncompliance—Exemption to Christian Science establishments.** Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 shall constitute grounds for revocation of license: PROVIDED, HOWEVER, That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [1983 c 3 § 180; 1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953-67.]

**71.12.640 Prosecuting attorney shall prosecute violations.** The prosecuting attorney of every county shall, upon application by the department of social and health services, the department of health, or its authorized representatives, institute and conduct the prosecution of any action brought for the violation within his county of any of the provisions of this chapter. [1989 1st ex.s. c 9 § 234; 1979 c 141 § 140; 1959 c 25 § 71.12.640. Prior: 1949 c 198 § 55; Rem. Supp. 1949 § 6953-54.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

Chapter 71.20

LOCAL FUNDS FOR COMMUNITY SERVICES

(Formerly: State and local services for mentally retarded and developmentally disabled)

- Sections: 71.20.100 Expenditures of county funds subject to county fiscal laws. 71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes.

**71.20.100 Expenditures of county funds subject to county fiscal laws.** Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 110 § 10.]

**71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes.** In order to provide additional funds for the coordination and provision of community services for persons with developmental disabilities or mental health services, the county governing authority of each county in the state shall budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of

## Title 71 RCW:

- (b) Being gravely disabled as defined in RCW 71.05.020(1) or, in the case of a child, as defined in RCW 71.34.020(6), or
- (c) Presenting a likelihood of serious harm as defined in RCW 71.05.020(3) or, in the case of a child, as defined in RCW 71.34.020(11).
- (2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24.045. When regional support networks are established or after July 1, 1995, "available resources" means federal funds, except those provided according to Title XIX of the social security act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, respite management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(d).
- (3) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.88 RCW.
- (4) "Child" means a person under the age of eighteen years.
- (5) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:
- (a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or
- (b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or
- (c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months.
- "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.
- (6) "Severely emotionally disturbed child" means an infant or child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:
- (a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;
- (b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;
- (c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;
- (d) Is at risk of escalating maladjustment due to:
- (i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;
- (ii) Changes in custodial adult;

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## Title 71 RCW:

secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

(14) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed at risk of becoming acutely mentally ill persons, chronically mentally ill adults, or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

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

(16) "Seriously disturbed person" means a person who:

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

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

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

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

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

(18) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as

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established by departmental rules and necessary to implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers by the provision of mental health services as established by departmental rules pursuant to chapter 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service; and the rights and responsibilities of persons receiving mental health services pursuant to this chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the developing of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict program flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers. [1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

**71.24.030 Grants to counties for programs.** The secretary is authorized, pursuant to this chapter and the rules promulgated to effectuate its purposes, to make grants to counties or combinations of counties in the establishment and operation of community mental health programs. [1982 c 204 § 6; 1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

**71.24.035 Secretary's powers and duties as state mental health authority, county authority.** (1) The department is designated as the state mental health authority.

(2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

[Title 71 RCW—page 33]

(b) Assume that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:

- (A) Outpatient services;
- (B) Emergency care services for twenty-four hours per day;
- (C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;
- (D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;
- (E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;
- (F) Consultation and education services; and
- (G) Community support services;

(c) Develop and promulgate rules establishing state minimum standards for the delivery of mental health services including, but not limited to:

- (i) Licensed service providers;
- (ii) Regional support networks; and
- (iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assume that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section:

- (e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;
- (f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;
- (g) Develop and maintain an information system to be used by the state, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: PROVIDED, HOWEVER, That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the

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regional support network to perform its required duties under this chapter:

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter 34.05 RCW: PROVIDED, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(o) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1993, or when regional support networks are established, available resources may be used only for regional support networks.

(p) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(q) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(r) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(s) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

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networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1 of any year thereafter shall submit their intentions by October 30 of the previous year along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the Medicaid program, and P.L. 99-560. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) By January 1, 1992, the secretary shall provide available resources to regional support networks to operate free-standing evaluation and treatment facilities or for regional support networks to contract with local hospitals to assure access for regional support network patients.

(17) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1, 1995. The contracts shall be approved with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1993; regional support networks created by January 1, 1992, shall receive a single block grant by July 1, 1994; and regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For

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(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(13) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section. These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section. These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The department shall submit a proposed distribution formula in accordance with this section to the ways and means and health and long-term care committees of the senate and to the ways and means and human services committees of the house of representatives by October 1, 1991. The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5) (a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults, severely emotionally disturbed children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, or severely emotionally disturbed, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support

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regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seven years according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(g) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(h) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

(i) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

(18) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal Medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

(19) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. The task force shall report back to the appropriate committees of the legislature by January 1, 1990. [1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

**Reviser's note:** This section was amended by 1991 c 39 § 1, 1991 c 262 § 1, and by 1991 c 306 § 3, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1987 c 105:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government, and the existing public institutions, and shall take effect July 1, 1987." [1987 c 105 § 2.]

**Effective date—1986 c 274 §§ 1, 2, 3, 5, 9:** See note following RCW 71.24.015.

**71.24.045 County authority powers and duties. (Effective until July 1, 1995.)** The county authority shall: (1) Submit biennial needs assessments beginning January 1, 1983, and mental health service plans which incorporate all services provided for by the county authority

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consistent with state minimum standards and which provide access to treatment for the county's residents including children and other underserved populations who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed, or seriously disturbed. The county program shall provide:

- (a) Outpatient services;
- (b) Emergency care services for twenty-four hours per day;

(c) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(d) Screening for patients being considered for admission to state mental health facilities to determine appropriateness of admission;

(e) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work;

(f) Consultation and education services;

(g) Residential and inpatient services; if the county chooses to provide such optional services; and

(h) Community support services. The county shall develop the biennial needs assessment based on clients to be served, services to be provided, and the cost of those services, and may include input from the public, clients, and licensed service providers. Each county authority may appoint a county mental health advisory board which shall review and provide comments on plans and policies developed by the county authority under this chapter. The composition of the board shall be broadly representative of the demographic character of the county and the mentally ill persons served therein. Length of terms of board members shall be determined by the county authority.

(2) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers.

(3) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective.

(4) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts, including the minimum standards of service delivery as established by the department.

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(6) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155. PROVIDED, That county authorities serving a county or combination of counties whose population is one hundred twenty-five thousand or more may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board.

(7) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital. [1992 c 230 § 5. Prior: 1991 c 363 § 147; 1991 c 306 § 5; 1991 c 29 § 2; 1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

**Effective date—1992 c 230:** "Section 5 of this act shall take effect July 1, 1995." [1992 c 230 § 8.]

**Inam—1992 c 230:** See note following RCW 72.23.025.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1986 c 274 §§ 1, 2, 3, 5, 9:** See note following RCW 71.24.015.

**71.24.049 Identification by county authority—Children's mental health services.** By January 1, 1987, and each odd-numbered year thereafter, the county authority shall identify: (1) The number of children in each priority group, as defined by this chapter, who are receiving mental health services funded in part or in whole under this chapter. (2) The amount of funds under this chapter used for children's mental health services. (3) An estimate of the number of unserved children in each priority group, and (4) the estimated cost of serving these additional children and their families. [1986 c 274 § 6.]

**71.24.100 Joint agreements of county authorities—Required provisions.** Any agreement between two or more county authorities for the establishment of a community mental health program shall provide:

- (1) That each county shall bear a share of the cost of mental health services; and
- (2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [1982 c 204 § 7; 1967 ex.s. c 111 § 10.]

**71.24.110 Joint agreements of county authorities—Permissive provisions.** Such agreement for the establishment of a community mental health program may also provide:

- (1) For the joint supervision or operation of services and facilities or for the supervision or operation of service and facilities by one participating county under contract for the other participating counties; and

(5) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter.

(6) Maintain patient tracking information in a central location as required for resource management services;

(7) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155. PROVIDED, That county authorities serving a county or combination of counties whose population is one hundred twenty-five thousand or more may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board.

(8) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital. [1991 c 363 § 147; 1991 c 306 § 5; 1991 c 29 § 2; 1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

**Reviser's note:** This section was amended by 1991 c 306 § 5 and by 1991 c 363 § 147, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1986 c 274 §§ 1, 2, 3, 5, 9:** See note following RCW 71.24.015.

**71.24.045 County authority powers and duties. (Effective July 1, 1995.)** The county authority shall:

(1) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers.

(2) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective.

(3) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts, including the minimum standards of service delivery as established by the department.

(4) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter.

(5) Maintain patient tracking information in a central location as required for resource management services;

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(2) For such other matters as are necessary or proper to effectuate the purposes of this chapter. [1982 c 204 § 8; 1967 ex.s. c 111 § 11.]

**71.24.155 Grants to counties—Accounting.** Grants shall be made by the department to counties for community mental health programs totaling not less than ninety-five percent of available resources. The department may use up to forty percent of the remaining five percent to provide community demonstration projects, including early intervention or primary prevention programs for children, and the remainder shall be for emergency needs and technical assistance under this chapter. [1987 c 505 § 65; 1986 c 274 § 9; 1982 c 204 § 9.]

**Effective date—**1986 c 274 § 1, 2, 3, 5, 9; See note following RCW 71.24.015.

**71.24.160 Proof as to uses made of state funds.** The county authority shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. [1989 c 205 § 7; 1982 c 204 § 10; 1967 ex.s. c 111 § 16.]

**71.24.200 Expenditures of county funds subject to county fiscal laws.** Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 111 § 20.]

**71.24.215 Clients to be charged for services.** Clients receiving mental health services funded by available resources shall be charged a fee under sliding-scale fee schedules, based on ability to pay, approved by the department. Fees shall not exceed the actual cost of care. [1982 c 204 § 11.]

**71.24.220 Reimbursement may be withheld for noncompliance with chapter or regulations.** The secretary may withhold state grants in whole or in part for any community mental health program in the event of a failure to comply with this chapter or regulations made by the department pursuant thereto relating to the community mental health program or the administration thereof. [1982 c 204 § 12; 1967 ex.s. c 111 § 22.]

**71.24.240 County program plans to be approved by secretary prior to submittal to federal agency.** In order to establish eligibility for funding under this chapter, any county or counties seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program plans to the secretary for prior review and approval before such plans are submitted to any federal agency. [1982 c 204 § 13; 1967 ex.s. c 111 § 24.]

**71.24.250 County authority may accept and expend gifts and grants.** The county authority may accept and expend gifts and grants received from private, county, state, and federal sources. [1982 c 204 § 14; 1967 ex.s. c 111 § 25.]

**71.24.260 Waiver of postgraduate educational requirements.** The department shall waive postgraduate educational requirements applicable to mental health professionals under this chapter for those persons who have a bachelor's degree and on June 11, 1986.

(1) Are employed by an agency subject to licensure under this chapter, the community mental health services act, in a capacity involving the treatment of mental illness; and  
(2) Have at least ten years of full-time experience in the treatment of mental illness. [1986 c 274 § 10.]

**71.24.300 Regional support networks—Generally.** A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. The roles and responsibilities of county authorities shall be determined by the terms of that agreement and the provisions of law. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall within three months of recognition submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties by July 1, 1995, instead of those presently assigned to counties under RCW 71.24.045(1):

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) By July 1, 1993, provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. Insofar as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each regional support network. Such exceptions are limited to contracts with neighboring or contiguous regions. For regional support networks that are created after June 30, 1991, the requirements of (c) of this subsection must be met by July 1, 1995.

(d) By July 1, 1993, administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties within the boundaries of any regional support network, with the exception of mentally ill offenders, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen

days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section. For regional support networks that are created after June 30, 1991, the requirements of (d) of this subsection must be met by July 1, 1995.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, and employment services as defined in RCW 71.24.035, and mental health services to children as provided in this chapter.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.  
(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary. Such contracts may include agreements to provide periods of stable community living and work or other day activities for specific chronically mentally ill persons who have completed commitments at state hospitals on ninety-day or one hundred eighty-day civil commitments or who have been residents at state hospitals for no less than one hundred eighty days within the previous year. Periods of stable community living may involve acute care in local evaluation and treatment facilities but may not involve use of state hospitals.

(6) Counties or groups of counties participating in a regional support network are not subject to "RCW 71.24.045(7). The office of financial management shall consider information gathered in studies required in this chapter and information about the experience of other states to propose a mental health services administrative cost lid to the 1995 legislature which shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) By November 1, 1991, and as part of each biennial plan thereafter, each regional support network shall establish

and submit to the state, procedures and agreements to assure access to sufficient additional local evaluation and treatment facilities to meet the requirements of this chapter while reducing short-term admissions to state hospitals. These shall be commitments to construct and operate, or contract for the operation of, freestanding evaluation and treatment facilities or agreements with local evaluation and treatment facilities which shall include (a) required admission and treatment for short-term inpatient care for any person enrolled in community support or residential services, (b) discharge planning procedures, (c) limitations on admissions or transfers to state hospitals, (d) adequate psychiatric supervision, (e) prospective payment methods, and (f) contractual assurances regarding referrals to local evaluation and treatment facilities from regional support networks.

(8) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (1) of this section. [1992 c 230 § 6; Prior: 1991 c 295 § 3; 1991 c 262 § 2; 1991 c 29 § 3; 1989 c 205 § 5.]

**Reviser's note:** Effective July 1, 1995, the correct reference to this subsection is RCW 71.24.045(6).

**Intent—**1992 c 230: See note following RCW 71.23.025.

**Evaluation of transition to regional systems—**1989 c 205: See note following RCW 71.24.015.

**71.24.310 Implementation of chapters 71.05 and 71.24 RCW through regional support networks.** The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that any enhanced program funding for implementation of chapter 71.05 RCW or this chapter, except for funds allocated for implementation of mandatory state-wide programs as required by federal statute, be made available primarily to those counties participating in regional support networks. [1989 c 205 § 6.]

**Evaluation of transition to regional systems—**1989 c 205: See note following RCW 71.24.015.

**71.24.900 Effective date—**1967 ex.s. c 111. This act shall take effect on July 1, 1967. [1967 ex.s. c 111 § 26.]

**71.24.901 Severability—**1982 c 204. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 204 § 28.]

**71.24.902 Construction.** Nothing in this chapter shall be construed as prohibiting the secretary from consolidating within the department children's mental health services with other departmental services related to children. [1986 c 274 § 7.]

**Chapter 71.05 RCW  
MENTAL ILLNESS****RCW SECTIONS**

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- 71.05.012 Legislative intent and finding.
- 71.05.020 Definitions.
- 71.05.025 Integration with chapter 71.24 RCW -- Regional support networks.
- 71.05.030 Commitment laws applicable.
- 71.05.035 Findings -- Developmentally disabled.
- 71.05.040 Detention or judicial commitment of persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia.
- 71.05.050 Voluntary application for mental health services -- Rights -- Review of condition and status -- Detention -- Person refusing voluntary admission, temporary detention.
- 71.05.060 Rights of persons complained against.
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- 71.05.160 Petition for initial detention.
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- 71.05.240 Petition for involuntary treatment or alternative treatment--Probable cause hearing.
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- 71.05.300 Filing of petition -- Appearance -- Notice -- Advice as to rights -- Appointment of representative.
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- 71.05.325 Release -- Authorized leave -- Notice to prosecuting attorney.
- 71.05.330 Early release -- Notice to court and prosecuting attorney -- Petition for hearing.
- 71.05.335 Modification of order for inpatient treatment -- Intervention by prosecuting attorney.
- 71.05.340 Outpatient treatment or care -- Conditional release -- Procedures for revocation.
- 71.05.350 Assistance to released persons.
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Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Minors -- Mental health services, commitment: Chapter 71.34 RCW.

Regional support networks: RCW 71.24.310.

**RCW 71.05.010****Legislative intent.**

The provisions of this chapter are intended by the legislature:

- (1) To prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;
- (2) To provide prompt evaluation and timely and appropriate treatment of persons with serious mental disorders;
- (3) To safeguard individual rights;
- (4) To provide continuity of care for persons with serious mental disorders;
- (5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;
- (6) To encourage, whenever appropriate, that services be provided within the community;
- (7) To protect the public safety.

[1998 c 297 § 2; 1997 c 112 § 2; 1989 c 120 § 1; 1973 1st ex.s. c 142 § 6.]

**NOTES:**

**Effective dates -- 1998 c 297:** "This act takes effect July 1, 1998, except for sections 18, 35, 38, and 39 of this act, which take effect March 1, 1999." [1998 c 297 § 53.]

**Severability -- 1998 c 297:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 297 § 58.]

**Intent -- 1998 c 297:** "It is the intent of the legislature to: (1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; (2) improve and clarify the sharing of information between the mental health and criminal justice systems; and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system.

The legislature recognizes that a person can be incompetent to stand trial, but may not be gravely disabled or may not present a likelihood of serious harm. The legislature does not intend to create a presumption that a person who is found incompetent to stand trial is gravely disabled or presents a likelihood of serious harm requiring civil commitment." [1998 c 297 § 1.]

**RCW 71.05.012**

**Legislative intent and finding.**

It is the intent of the legislature to enhance continuity of care for persons with serious mental disorders that can be controlled or stabilized in a less restrictive alternative commitment. Within the guidelines stated in *In Re LaBelle* 107 Wn. 2d 196 (1986), the legislature intends to encourage appropriate interventions at a point when there is the best opportunity to restore the person to or maintain satisfactory functioning.

For persons with a prior history or pattern of repeated hospitalizations or law enforcement interventions due to decompensation, the consideration of prior mental history is particularly relevant in determining whether the person would receive, if released, such care as is essential for his or her health or safety.

Therefore, the legislature finds that for persons who are currently under a commitment order, a prior history of decompensation leading to repeated hospitalizations or law enforcement interventions should be given great weight in determining whether a new less restrictive alternative commitment should be ordered.

[1997 c 112 § 1.]

### **RCW 71.05.020**

#### **Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;
  - (b) The conditions and strategies necessary to achieve the purposes of habilitation;
  - (c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;
  - (d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;
  - (e) The staff responsible for carrying out the plan;
  - (f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and
  - (g) The type of residence immediately anticipated for the person and possible future types of residences;
- (18) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;
- (19) "Likelihood of serious harm" means:

- (a) A substantial risk that: (i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or
- (b) The individual has threatened the physical safety of another and has a history of one or more violent acts;
- (20) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;
- (21) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;
- (22) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;
- (23) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;
- (24) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;
- (25) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;
- (26) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;
- (27) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;[,] if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;
- (28) "Release" means legal termination of the commitment under the provisions of this chapter;
- (29) "Resource management services" has the meaning given in chapter 71.24 RCW;
- (30) "Secretary" means the secretary of the department of social and health services, or his or her designee;
- (31) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;
- (32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

[2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3. Prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.025****Integration with chapter 71.24 RCW -- Regional support networks.**

The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to assure a continuum of care to persons who are mentally ill or who have mental disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, regional support networks established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by county-designated mental health professionals and evaluation and treatment facilities to assure that determinations to admit, detain, commit, treat, discharge, or release persons with mental disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services.

[2000 c 94 § 2; 1989 c 205 § 9.]

**NOTES:**

**Evaluation of transition to regional systems -- 1989 c 205:** See note following RCW 71.24.015.

**RCW 71.05.030****Commitment laws applicable.**

Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, chapter 10.77 RCW, chapter 71.06 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing.

[1998 c 297 § 4; 1985 c 354 § 31; 1983 c 3 § 179; 1974 ex.s. c 145 § 4; 1973 2nd ex.s. c 24 § 2; 1973 1st ex.s. c 142 § 8.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**Severability -- Effective date -- 1985 c 354:** See RCW 71.34.900 and 71.34.901.

**RCW 71.05.035****Findings -- Developmentally disabled.**

The legislature finds that among those persons who endanger the safety of others by committing crimes are a small

number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity.

The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities.

Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety.

[1998 c 297 § 5; 1989 c 420 § 2.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.040**

**Detention or judicial commitment of persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia.**

Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm.

[1997 c 112 § 4; 1987 c 439 § 1; 1977 ex.s. c 80 § 41; 1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

**NOTES:**

**Purpose -- Intent -- Severability -- 1977 ex.s. c 80:** See notes following RCW 4.16.190.

**RCW 71.05.050**

**Voluntary application for mental health services -- Rights -- Review of condition and status -- Detention -- Person refusing voluntary admission, temporary detention.**

Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his or her request. Any person voluntarily admitted for inpatient treatment to any public or private agency

shall orally be advised of the right to immediate discharge, and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment or possible discharge, at which time they shall again be advised of their right to discharge upon request: PROVIDED HOWEVER, That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests discharge as presenting, as a result of a mental disorder, an imminent likelihood of serious harm, or is gravely disabled, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: PROVIDED FURTHER, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff determine that an evaluation by the county designated mental health professional is necessary.

[2000 c 94 § 3; 1998 c 297 § 6; 1997 c 112 § 5; 1979 ex.s. c 215 § 6; 1975 1st ex.s. c 199 § 2; 1974 ex.s. c 145 § 6; 1973 1st ex.s. c 142 § 10.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.060**

**Rights of persons complained against.**

A person subject to confinement resulting from any petition or proceeding pursuant to the provisions of this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter.

[1973 1st ex.s. c 142 § 11.]

**RCW 71.05.070**

**Prayer treatment.**

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

[1973 1st ex.s. c 142 § 12.]

**RCW 71.05.090**

**Choice of physicians.**

Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available

physician or other professional person qualified to provide such services.

[1973 2nd ex.s. c 24 § 3; 1973 1st ex.s. c 142 § 14.]

#### **RCW 71.05.100**

##### **Financial responsibility.**

In addition to the responsibility provided for by RCW 43.20B.330, any person, or his or her estate, or his or her spouse, or the parents of a minor person who is involuntarily detained pursuant to this chapter for the purpose of treatment and evaluation outside of a facility maintained and operated by the department shall be responsible for the cost of such care and treatment. In the event that an individual is unable to pay for such treatment or in the event payment would result in a substantial hardship upon the individual or his or her family, then the county of residence of such person shall be responsible for such costs. If it is not possible to determine the county of residence of the person, the cost shall be borne by the county where the person was originally detained. The department shall, pursuant to chapter 34.05 RCW, adopt standards as to (1) inability to pay in whole or in part, (2) a definition of substantial hardship, and (3) appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards. Financial responsibility with respect to department services and facilities shall continue to be as provided in RCW 43.20B.320 through 43.20B.360 and 43.20B.370.

[1997 c 112 § 6; 1987 c 75 § 18; 1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

#### **NOTES:**

Savings -- Severability -- 1987 c 75: See RCW 43.20B.900 and 43.20B.901.

#### **RCW 71.05.110**

##### **Compensation of appointed counsel.**

Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the costs of such services shall be borne by the county in which the proceeding is held, subject however to the responsibility for costs provided in RCW 71.05.320(2).

[1997 c 112 § 7; 1973 1st ex.s. c 142 § 16.]

#### **RCW 71.05.120**

##### **Exemptions from liability.**

(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, discharge, release, administer antipsychotic medications, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence.

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

[2000 c 94 § 4; 1991 c 105 § 2; 1989 c 120 § 3; 1987 c 212 § 301; 1979 ex.s. c 215 § 7; 1974 ex.s. c 145 § 7; 1973 2nd ex.s. c 24 § 5; 1973 1st ex.s. c 142 § 17.]

**NOTES:**

**Severability -- 1991 c 105:** See note following RCW 71.05.215.

**RCW 71.05.130**

**Duties of prosecuting attorney and attorney general.**

In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to such commitment or detention: PROVIDED, That the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention.

[1998 c 297 § 7; 1991 c 105 § 3; 1989 c 120 § 4; 1979 ex.s. c 215 § 8; 1973 1st ex.s. c 142 § 18.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**Severability -- 1991 c 105:** See note following RCW 71.05.215.

**RCW 71.05.135**

**Mental health commissioners -- Appointment.**

In each county the superior court may appoint the following persons to assist the superior court in disposing of its business: PROVIDED, That such positions may not be created without prior consent of the county legislative authority:

- (1) One or more attorneys to act as mental health commissioners; and
- (2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Mental health commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine.

The appointments may be full or part-time positions. A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law.

[1993 c 15 § 2; 1991 c 363 § 146; 1989 c 174 § 1.]

**NOTES:**

**Effective date -- 1993 c 15:** See note following RCW 26.12.050.

**Purpose -- Captions not law -- 1991 c 363:** See notes following RCW 2.32.180.

**Severability -- 1989 c 174:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 174 § 4.]

**RCW 71.05.137**

**Mental health commissioners -- Authority.**

The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

- (1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;
- (2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;
- (3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;
- (4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;
- (5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and
- (6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court.

[1989 c 174 § 2.]

**NOTES:**

**Severability -- 1989 c 174:** See note following RCW 71.05.135.

**RCW 71.05.140**

**Records maintained.**

A record of all applications, petitions, and proceedings under this chapter shall be maintained by the county clerk in which the application, petition, or proceeding was initiated.

[1973 1st ex.s. c 142 § 19.]

#### **RCW 71.05.145**

##### **Dangerous mentally ill offenders -- Less restrictive alternative.**

The legislature intends that, when evaluating a person who is identified under RCW 72.09.370(7), the professional person at the evaluation and treatment facility shall, when appropriate after consideration of the person's mental condition and relevant public safety concerns, file a petition for a ninety-day less restrictive alternative in lieu of a petition for a fourteen-day commitment.

[1999 c 214 § 4.]

#### **NOTES:**

**Intent -- Effective date -- 1999 c 214:** See notes following RCW 72.09.370.

#### **RCW 71.05.150**

##### **Detention of mentally ill persons for evaluation and treatment -- Procedure.**

(1)(a) When a county designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; or (ii) is gravely disabled; the county designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the county designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility.

(b) Whenever it appears, by petition for initial detention, to the satisfaction of a judge of the superior court that a person presents, as a result of a mental disorder, a likelihood of serious harm, or is gravely disabled, and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily, the judge may issue an order requiring the person to appear within twenty-four hours after service of the order at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period. The order shall state the address of the evaluation and treatment facility to which the person is to report and whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient basis and that if the person named in the order fails to appear at the evaluation and treatment facility at or before the date and time stated in the order, such person may be involuntarily taken into custody for evaluation and treatment. The order shall also designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(c) The county designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to appear together with a notice of rights and a petition for initial detention. After service on such person the county designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The county designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of

outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to remain in his or her home or other place of his or her choosing prior to the time of evaluation and shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(d) If the person ordered to appear does appear on or before the date and time specified, the evaluation and treatment facility may admit such person as required by RCW 71.05.170 or may provide treatment on an outpatient basis. If the person ordered to appear fails to appear on or before the date and time specified, the evaluation and treatment facility shall immediately notify the county designated mental health professional who may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. Should the county designated mental health professional notify a peace officer authorizing him or her to take a person into custody under the provisions of this subsection, he or she shall file with the court a copy of such authorization and a notice of detention. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of detention, a notice of rights, and a petition for initial detention.

(2) When a county designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the county designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(3) A peace officer may take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility pursuant to subsection (1)(d) of this section.

(4) A peace officer may, without prior notice of the proceedings provided for in subsection (1) of this section, take or cause such person to be taken into custody and immediately delivered to an evaluation and treatment facility or the emergency department of a local hospital:

(a) Only pursuant to subsections (1)(d) and (2) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(5) Persons delivered to evaluation and treatment facilities by peace officers pursuant to subsection (4)(b) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the county designated mental health professional must file a supplemental petition for detention, and commence service on the designated attorney for the detained person.

[1998 c 297 § 8; 1997 c 112 § 8; 1984 c 233 § 1; 1979 ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.155****Request to mental health professional by law enforcement agency for investigation under RCW 71.05.150 -- Advisory report of results.**

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

[1997 c 112 § 9; 1979 ex.s. c 215 § 10.]

**RCW 71.05.160****Petition for initial detention.**

Any facility receiving a person pursuant to RCW 71.05.150 shall require a petition for initial detention stating the circumstances under which the person's condition was made known and stating that such officer or person has evidence, as a result of his or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150, on the next judicial day following the initial detention, the county designated mental health professional shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention.

[1998 c 297 § 9; 1997 c 112 § 10; 1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.170****Acceptance of petition -- Notice -- Duty of state hospital.**

Whenever the county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the county designated mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW.

[2000 c 94 § 5; 1998 c 297 § 10; 1997 c 112 § 11; 1989 c 205 § 10; 1974 ex.s. c 145 § 10; 1973 1st ex.s. c 142 § 22.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.180****Detention period for evaluation and treatment.**

If the evaluation and treatment facility admits the person, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance as set forth in RCW 71.05.170. The computation of such seventy-two hour period shall exclude Saturdays, Sundays and holidays.

[1997 c 112 § 12; 1979 ex.s. c 215 § 11; 1974 ex.s. c 145 § 11; 1973 1st ex.s. c 142 § 23.]

**RCW 71.05.190****Persons not admitted -- Transportation -- Detention of arrested person pending return to custody.**

If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his or her place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer in order to enable a peace officer to return to the facility and take the individual back into custody.

[1997 c 112 § 13; 1979 ex.s. c 215 § 12; 1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

**RCW 71.05.200****Notice and statement of rights -- Probable cause hearing.**

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

(a) That a judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a mentally ill person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

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

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

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

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

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

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court.

[1998 c 297 § 11; 1997 c 112 § 14; 1989 c 120 § 5; 1974 ex.s. c 145 § 13; 1973 1st ex.s. c 142 § 25.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.210**

**Evaluation -- Treatment and care -- Release or other disposition.**

Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.370, the individual may refuse psychiatric medications, but may not refuse: (1) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (2) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in a chemical-dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

An evaluation and treatment center admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the county designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

[2000 c 94 § 6; 1998 c 297 § 12; 1997 c 112 § 15; 1994 sp.s. c 9 § 747. Prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Findings -- Construction -- Conflict with federal requirements -- 1991 c 364:** See notes following RCW 70.96A.020.

**Severability -- 1991 c 105:** See note following RCW 71.05.215.

**RCW 71.05.212****Evaluation -- Consideration of information and records.**

Whenever a county designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information and records regarding: (1) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW; (2) history of one or more violent acts; (3) prior determinations of incompetency or insanity under chapter 10.77 RCW; and (4) prior commitments under this chapter.

In addition, when conducting an evaluation for offenders identified under RCW 72.09.370, the county designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement.

[1999 c 214 § 5; 1998 c 297 § 19.]

**NOTES:**

**Intent -- Effective date -- 1999 c 214:** See notes following RCW 72.09.370.

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.214****Protocols -- Development -- Submission to governor and legislature.**

The department shall develop statewide protocols to be utilized by professional persons and county designated mental health professionals in administration of this chapter and chapter 10.77 RCW. The protocols shall be updated at least every three years. The protocols shall provide uniform development and application of criteria in evaluation and commitment recommendations, of persons who have, or are alleged to have, mental disorders and are subject to this chapter.

The initial protocols shall be developed not later than September 1, 1999. The department shall develop and update the protocols in consultation with representatives of county designated mental health professionals, local

government, law enforcement, county and city prosecutors, public defenders, and groups concerned with mental illness. The protocols shall be submitted to the governor and legislature upon adoption by the department.

[1998 c 297 § 26.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.215**

**Right to refuse antipsychotic medicine -- Rules.**

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

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

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

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

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

(d) Administration of antipsychotic medication in an emergency and review of this decision within twenty-four hours. An emergency exists if the person presents an imminent likelihood of serious harm, and medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and in the opinion of the physician, the person's condition constitutes an emergency requiring the treatment be instituted prior to obtaining a second medical opinion.

(e) Documentation in the medical record of the physician's attempt to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent.

[1997 c 112 § 16; 1991 c 105 § 1.]

**NOTES:**

**Severability -- 1991 c 105:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 105 § 6.]

**RCW 71.05.220**

**Property of committed person.**

At the time a person is involuntarily admitted to an evaluation and treatment facility, the professional person in

charge or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the person detained. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this section, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without the consent of the patient or order of the court.

[1997 c 112 § 17; 1973 1st ex.s. c 142 § 27.]

### **RCW 71.05.230**

#### **Procedures for additional treatment.**

A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment if the following conditions are met:

- (1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and
- (2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and
- (3) The facility providing intensive treatment is certified to provide such treatment by the department; and
- (4) The professional staff of the agency or facility or the county designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by two physicians or by one physician and a mental health professional who have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and
- (5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and
- (6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and
- (7) The court has ordered a fourteen day involuntary intensive treatment or a ninety day less restrictive alternative treatment after a probable cause hearing has been held pursuant to RCW 71.05.240; and
- (8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the county designated mental health professional may petition for an additional period of either ninety days of less

restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility.

[1998 c 297 § 13; 1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.235**

**Examination, evaluation of criminal defendant -- Hearing.**

(1) If an individual is referred to a county designated mental health professional under RCW 10.77.090(1)(d)(iii)(A), the county designated mental health professional shall examine the individual within forty-eight hours. If the county designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the county designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the county designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the

petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding the person named in the petition shall continue to be detained and treated until released by order of the court. If no order has been made within thirty days after the filing of the petition, not including any extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

(3) If a county designated mental health professional or the professional person and prosecuting attorney for the county in which the criminal charge was dismissed or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.250.

[2000 c 74 § 6; 1999 c 11 § 1; 1998 c 297 § 18.]

**NOTES:**

**Severability -- 2000 c 74:** See note following RCW 10.77.060.

**Effective date -- 1999 c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 1, 1999, or upon approval by the governor, whichever occurs later [April 15, 1999]." [1999 c 11 § 2.]

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.237**

**Judicial proceedings -- Court to enter findings when recommendations of professional person not followed.**

In any judicial proceeding in which a professional person has made a recommendation regarding whether an individual should be committed for treatment under this chapter, and the court does not follow the recommendation, the court shall enter findings that state with particularity its reasoning, including a finding whether the state met its burden of proof in showing whether the person presents a likelihood of serious harm.

[1998 c 297 § 25.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.240**

**Petition for involuntary treatment or alternative treatment--Probable cause hearing.**

If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as

determined in RCW 71.05.180. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment for not to exceed ninety days.

The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. The court shall also provide written notice that the person is barred from the possession of firearms.

[1997 c 112 § 19; 1992 c 168 § 3; 1987 c 439 § 5; 1979 ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

**NOTES:**

**Severability -- 1992 c 168:** See note following RCW 9.41.070.

**RCW 71.05.245**

**Determination of likelihood of serious harm -- Use of recent history evidence.**

In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (1) A recent history of one or more violent acts; or (2) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this section "recent" refers to the period of time not exceeding three years prior to the current hearing.

[1999 c 13 § 6; 1998 c 297 § 14.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.250**

**Probable cause hearing -- Detained person's rights -- Waiver of privilege -- Limitation -- Records as**

**evidence.**

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

- (1) To present evidence on his or her behalf;
- (2) To cross-examine witnesses who testify against him or her;
- (3) To be proceeded against by the rules of evidence;
- (4) To remain silent;
- (5) To view and copy all petitions and reports in the court file.

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

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

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

[1989 c 120 § 7; 1987 c 439 § 6; 1974 ex.s. c 145 § 17; 1973 1st ex.s. c 142 § 30.]

**RCW 71.05.260****Release from involuntary intensive treatment -- Exception.**

(1) Involuntary intensive treatment ordered at the time of the probable cause hearing shall be for no more than fourteen days, and shall terminate sooner when, in the opinion of the professional person in charge of the facility or his or her professional designee, (a) the person no longer constitutes a likelihood of serious harm, or (b) no longer is gravely disabled, or (c) is prepared to accept voluntary treatment upon referral, or (d) is to remain in the facility providing intensive treatment on a voluntary basis.

(2) A person who has been detained for fourteen days of intensive treatment shall be released at the end of the fourteen days unless one of the following applies: (a) Such person agrees to receive further treatment on a voluntary basis; or (b) such person is a patient to whom RCW 71.05.280 is applicable.

[1997 c 112 § 20; 1987 c 439 § 7; 1974 ex.s. c 145 § 18; 1973 1st ex.s. c 142 § 31.]

**RCW 71.05.270**

<http://www.leg.wa.gov/rcw/index.cfm?fuseaction=chapter&chapter=71.05&RequestTimeout=500>

11/17/2003

**Temporary release.**

Nothing in this chapter shall prohibit the professional person in charge of a treatment facility, or his or her professional designee, from permitting a person detained for intensive treatment to leave the facility for prescribed periods during the term of the person's detention, under such conditions as may be appropriate.

[1997 c 112 § 21; 1973 1st ex.s. c 142 § 32.]

**RCW 71.05.280****Additional confinement -- Grounds.**

At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090 (4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime; or

(4) Such person is gravely disabled.

[1998 c 297 § 15; 1997 c 112 § 22; 1986 c 67 § 3; 1979 ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.285****Additional confinement -- Prior history evidence.**

In determining whether an inpatient or less restrictive alternative commitment under the process provided in RCW 71.05.280 and 71.05.320(2) is appropriate, great weight shall be given to evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) Repeated hospitalizations; or (2) repeated peace officer interventions resulting in juvenile offenses, criminal charges, diversion programs, or jail admissions. Such evidence may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety.

[2001 c 12 § 1; 1997 c 112 § 23.]

**RCW 71.05.290****Petition for additional confinement -- Affidavit.**

(1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the county designated mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by two examining physicians, or by one examining physician and examining mental health professional. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.090(4), then the professional person in charge of the treatment facility or his or her professional designee or the county designated mental health professional may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed.

[1998 c 297 § 16; 1997 c 112 § 24; 1986 c 67 § 4; 1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.300****Filing of petition -- Appearance -- Notice -- Advice as to rights -- Appointment of representative.**

The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the county designated mental health professional. The county designated mental health professional shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, and the prosecuting attorney, and provide a copy of the petition to such persons as soon as possible.

At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney and of his or her right to a jury trial. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the detained person to examine and testify on behalf of the detained person.

The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a developmentally disabled person who has been determined to be incompetent pursuant to RCW 10.77.090(4), then the appointed professional person under this section shall be a developmental disabilities professional.

The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310.

[1998 c 297 § 17; 1997 c 112 § 25; 1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.310**

**Time for hearing -- Due process -- Jury trial -- Continuation of treatment.**

The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

[1987 c 439 § 9; 1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

**RCW 71.05.320**

**Remand for additional treatment -- Duration -- Developmentally disabled -- Grounds -- Hearing.**

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department. If the committed person is developmentally disabled and has been determined incompetent pursuant to RCW 10.77.090(4), and the best interests of the person or others will not be served by a less-restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for one hundred eighty-day treatment by the department. When appropriate and subject to available funds, treatment and training of such persons must be provided in a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. An order for treatment less restrictive than involuntary detention may include

conditions, and if such conditions are not adhered to, the designated mental health professional or developmental disabilities professional may order the person apprehended under the terms and conditions of RCW 71.05.340.

If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(2) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional or developmental disabilities professional, files a new petition for involuntary treatment on the grounds that the committed person;

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to reprove that element. Such new petition for involuntary treatment shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this subsection are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this subsection. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(3) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length.

[1999 c 13 § 7; 1997 c 112 § 26; 1989 c 420 § 15; 1986 c 67 § 5; 1979 ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

**RCW 71.05.325**

**Release -- Authorized leave -- Notice to prosecuting attorney.**

(1) Before a person committed under grounds set forth in RCW 71.05.280(3) is released because a new petition for involuntary treatment has not been filed under RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least forty-five days before the period of commitment expires.

(2)(a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county of the person's destination and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed. The notice shall be provided at least forty-five days before the anticipated leave and shall describe the conditions under which the leave is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed leaves, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect.

(4) The existence of the notice requirements in this section will not require any extension of the leave date in the event the leave plan changes after notification.

(5) The notice requirements contained in this section shall not apply to emergency medical transfers.

(6) The notice provisions of this section are in addition to those provided in RCW 71.05.425.

[2000 c 94 § 7; 1994 c 129 § 8; 1990 c 3 § 111; 1989 c 401 § 1; 1986 c 67 § 2.]

**NOTES:**

**Findings -- Intent -- 1994 c 129:** See note following RCW 4.24.550.

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

**RCW 71.05.330**

**Early release -- Notice to court and prosecuting attorney -- Petition for hearing.**

(1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or

facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

[1998 c 297 § 20; 1997 c 112 § 27; 1986 c 67 § 1; 1973 1st ex.s. c 142 § 38.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.335**

**Modification of order for inpatient treatment -- Intervention by prosecuting attorney.**

In any proceeding under this chapter to modify a commitment order of a person committed to inpatient treatment under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) in which the requested relief includes treatment less restrictive than detention, the prosecuting attorney shall be entitled to intervene. The party initiating the motion to modify the commitment order shall serve the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed with written notice and copies of the initiating papers.

[1986 c 67 § 7.]

**RCW 71.05.340**

**Outpatient treatment or care -- Conditional release -- Procedures for revocation.**

(1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of

conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the county designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the county designated mental health professional, or the secretary determines that:

- (i) A conditionally released person is failing to adhere to the terms and conditions of his or her release;
- (ii) Substantial deterioration in a conditionally released person's functioning has occurred;
- (iii) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or
- (iv) The person poses a likelihood of serious harm.

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the county designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near

the county in which he or she is receiving outpatient treatment.

(b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or county designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her conditional release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The county designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The county designated mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the county designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the terms of conditional release should be modified or the person should be returned to the facility.

(e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the county designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order.

[2000 c 94 § 8; 1998 c 297 § 21; 1997 c 112 § 28; 1987 c 439 § 10; 1986 c 67 § 6; 1979 ex.s. c 215 § 16; 1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.350****Assistance to released persons.**

No indigent patient shall be conditionally released or discharged from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he or she deems necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so.

[1997 c 112 § 29; 1973 1st ex.s. c 142 § 40.]

**RCW 71.05.360****Rights of involuntarily detained persons.**

(1) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter and shall retain all rights not denied him or her under this chapter.

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

[1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

**RCW 71.05.370****Rights -- Posting of list.**

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

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

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

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

(4) To have visitors at reasonable times;

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

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

(7) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(2) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer antipsychotic medication or electroconvulsant therapy filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

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

(e) Any person detained pursuant to RCW 71.05.320(2), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in RCW 71.05.370(7).

(f) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order pursuant to RCW 71.05.215(2) or under the following circumstances:

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

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

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

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial

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

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

(9) Not to have psychosurgery performed on him or her under any circumstances.

[1997 c 112 § 31; 1991 c 105 § 5; 1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42.]

**NOTES:**

**Severability -- 1991 c 105:** See note following RCW 71.05.215.

**RCW 71.05.380**

**Rights of voluntarily committed persons.**

All persons voluntarily entering or remaining in any facility, institution, or hospital providing evaluation and treatment for mental disorder shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370.

[1973 1st ex.s. c 142 § 43.]

**RCW 71.05.390**

**Confidential information and records -- Disclosure.**

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

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

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

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

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

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

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

/s/ . . . . ."

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

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

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

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

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

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330 (2) and 71.05.340 (1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of

whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

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

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

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

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

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

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

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

[2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

#### NOTES:

**Reviser's note:** This section was amended by 2000 c 74 § 7, 2000 c 75 § 6, and by 2000 c 94 § 9, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent -- 2000 c 75:** See note following RCW 71.05.445.

**Severability -- 2000 c 74:** See note following RCW 10.77.060.

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**Effective date -- 1993 c 448:** See note following RCW 70.02.010.

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

#### **RCW 71.05.395**

**Application of uniform health care information act, chapter 70.02 RCW.**

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

[1993 c 448 § 8.]

#### **NOTES:**

**Effective date -- 1993 c 448:** See note following RCW 70.02.010.

#### **RCW 71.05.400**

**Release of information to patient's next of kin, attorney, guardian, conservator -- Notification of patient's death.**

- (1) A public or private agency shall release to a patient's next of kin, attorney, guardian, or conservator, if any,
- (a) The information that the person is presently a patient in the facility or that the person is seriously physically ill;
  - (b) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, guardian, or conservator; and such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(2) Upon the death of a patient, his or her next of kin, guardian, or conservator, if any, shall be notified.

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

[1993 c 448 § 7; 1974 ex.s. c 115 § 1; 1973 2nd ex.s. c 24 § 6; 1973 1st ex.s. c 142 § 45.]

#### **NOTES:**

<http://www.leg.wa.gov/rcw/index.cfm?fuseaction=chapter&chapter=71.05&RequestTimeout=500>

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**Effective date -- 1993 c 448:** See note following RCW 70.02.010.

#### **RCW 71.05.410**

##### **Notice of disappearance of patient.**

When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

[1997 c 112 § 32; 1973 2nd ex.s. c 24 § 7; 1973 1st ex.s. c 142 § 46.]

#### **RCW 71.05.420**

##### **Records of disclosure.**

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

[1990 c 3 § 113; 1973 1st ex.s. c 142 § 47.]

#### **NOTES:**

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

#### **RCW 71.05.425**

##### **Persons committed following dismissal of sex, violent, or felony harassment offense -- Notification of conditional release, final release, leave, transfer, or escape -- To whom given -- Definitions.**

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4):

- (i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the person in any court proceedings; and
- (iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.410. If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

- (a) "Violent offense" means a violent offense under RCW 9.94A.030;
- (b) "Sex offense" means a sex offense under RCW 9.94A.030;
- (c) "Next of kin" means a person's spouse, parents, siblings, and children;
- (d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

[2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

#### NOTES:

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

<http://www.leg.wa.gov/rcw/index.cfm?fuseaction=chapter&chapter=71.05&RequestTimeout=500>

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**Findings -- Intent -- 1994 c 129:** See note following RCW 4.24.550.

**Severability -- 1992 c 186:** See note following RCW 9A.46.110.

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

#### **RCW 71.05.427**

##### **Persons committed following dismissal of sex offense -- Release of information authorized.**

In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex offense as defined in RCW 9.94A.030.

[1990 c 3 § 110.]

#### **NOTES:**

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

#### **RCW 71.05.430**

##### **Statistical data.**

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

[1973 1st ex.s. c 142 § 48.]

#### **RCW 71.05.440**

##### **Action for unauthorized release of confidential information -- Liquidated damages -- Treble damages -- Injunction.**

Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this chapter, for the greater of the following amounts:

- (1) One thousand dollars; or
- (2) Three times the amount of actual damages sustained, if any. It shall not be a prerequisite to recovery under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general, damages.

Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

The court may award to the plaintiff, should he or she prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law.

[1990 c 3 § 114; 1974 ex.s. c 145 § 28; 1973 1st ex.s. c 142 § 49.]

**NOTES:**

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3: See RCW 18.155.900 through 18.155.902.**

**RCW 71.05.445**

**Mental health services information -- Release to department of corrections -- Rules.**

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

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

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

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

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

(4) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

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

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

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

(6) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.670 and 71.05.440.

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

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

[2002 c 39 § 2; 2000 c 75 § 3.]

#### NOTES:

**Intent -- 2000 c 75:** "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

#### RCW 71.05.450

##### Competency -- Effect -- Statement of Washington law.

Competency shall not be determined or withdrawn by operation of, or under the provisions of this chapter. Except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license, no person shall be presumed incompetent or lose any civil rights as a consequence of receiving evaluation or treatment for mental disorder, either voluntarily or involuntarily, or certification or commitment pursuant to this chapter or any prior laws of this state dealing with mental illness. Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section.

[1994 sp.s. c 7 § 440; 1973 1st ex.s. c 142 § 50.]

#### NOTES:

**Finding -- Intent -- Severability -- 1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date -- 1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**RCW 71.05.460****Right to counsel.**

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

[1997 c 112 § 33; 1973 1st ex.s. c 142 § 51.]

**RCW 71.05.470****Right to examination.**

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

[1997 c 112 § 34; 1973 1st ex.s. c 142 § 52.]

**RCW 71.05.480****Petitioning for release -- Writ of habeas corpus.**

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

[1974 ex.s. c 145 § 29; 1973 1st ex.s. c 142 § 53.]

**RCW 71.05.490****Rights of persons committed before January 1, 1974.**

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

[1997 c 112 § 35; 1973 1st ex.s. c 142 § 54.]

**RCW 71.05.500****Liability of applicant.**

Any person making or filing an application alleging that a person should be involuntarily detained, certified, committed, treated, or evaluated pursuant to this chapter shall not be rendered civilly or criminally liable where the making and filing of such application was in good faith.

[1973 1st ex.s. c 142 § 55.]

**RCW 71.05.510****Damages for excessive detention.**

Any individual who knowingly, wilfully or through gross negligence violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. It shall not be a prerequisite to an action under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general damages.

[1974 ex.s. c 145 § 30; 1973 1st ex.s. c 142 § 56.]

**RCW 71.05.520****Protection of rights -- Staff.**

The department of social and health services shall have the responsibility to determine whether all rights of individuals recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are in fact protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be necessary have authority to examine records, inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as guaranteed by the state and federal Constitutions.

[1973 1st ex.s. c 142 § 57.]

**RCW 71.05.525****Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles.**

When, in the judgment of the department, the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that such a person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of mentally ill juveniles the secretary, or his or her designee, is authorized to order and effect such move or transfer: PROVIDED, HOWEVER, That the secretary shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined in such institution or facility for the care of mentally ill juveniles, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in state juvenile correctional institutions or facilities: PROVIDED, FURTHER, That the secretary shall notify the original committing court of such transfer.

[1997 c 112 § 36; 1975 1st ex.s. c 199 § 12.]

**RCW 71.05.530****Facilities part of comprehensive mental health program.**

Evaluation and treatment facilities authorized pursuant to this chapter may be part of the comprehensive community mental health services program conducted in counties pursuant to chapter 71.24 RCW, and may receive funding pursuant to the provisions thereof.

[1998 c 297 § 23; 1973 1st ex.s. c 142 § 58.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.550****Recognition of county financial necessities.**

The department of social and health services, in planning and providing funding to counties pursuant to chapter 71.24 RCW, shall recognize the financial necessities imposed upon counties by implementation of this chapter and shall consider needs, if any, for additional community mental health services and facilities and reduction in commitments to state hospitals for the mentally ill accomplished by individual counties, in planning and providing such funding. The state shall provide financial assistance to the counties to enable the counties to meet all increased costs, if any, to the counties resulting from their administration of the provisions of chapter 142, Laws of 1973 1st ex. sess.

[1973 1st ex.s. c 142 § 60.]

**RCW 71.05.560****Adoption of rules.**

The department shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and facilities, and procedures and standards for certification and other action relevant to evaluation and treatment facilities.

[1998 c 297 § 24; 1973 1st ex.s. c 142 § 61.]

**NOTES:**

**Effective dates -- Severability -- Intent -- 1998 c 297:** See notes following RCW 71.05.010.

**RCW 71.05.5601**

**Rule making -- Medicaid -- Secretary of corrections -- Secretary of social and health services.**

See RCW 72.09.380.

**RCW 71.05.5602**

**Rule making -- Chapter 214, Laws of 1999 -- Secretary of corrections -- Secretary of social and health services.**

See RCW 72.09.381.

**RCW 71.05.570**

**Rules of court.**

The supreme court of the state of Washington shall adopt such rules as it shall deem necessary with respect to the court procedures and proceedings provided for by this chapter.

[1973 1st ex.s. c 142 § 62.]

### **RCW 71.05.575**

#### **Less restrictive alternative treatment -- Consideration by court.**

(1) When making a decision under this chapter whether to require a less restrictive alternative treatment, the court shall consider whether it is appropriate to include or exclude time spent in confinement when determining whether the person has committed a recent overt act.

(2) When determining whether an offender is a danger to himself or herself or others under this chapter, a court shall give great weight to any evidence submitted to the court regarding an offender's recent history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement.

[1999 c 214 § 6.]

#### **NOTES:**

**Intent -- Effective date -- 1999 c 214:** See notes following RCW 72.09.370.

### **RCW 71.05.610**

#### **Treatment records -- Definitions.**

As used in this chapter or chapter 71.24 or 10.77 RCW, the following words and phrases shall have the meanings indicated.

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

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

[1989 c 205 § 11.]

#### **NOTES:**

**Contingent effective date -- 1989 c 205 §§ 11-19:** "Sections 10 through 19 of this act shall take effect on July 1, 1995, or when regional support networks are established." [1989 c 205 § 24.] See note following chapter digest.

**\*Reviser's note:** The reference to "sections 10 through 19 of this act" is incorrect. The reference should have been to "sections 11 through 19 of this act," which are codified as RCW 71.05.610 through 71.05.690.

**RCW 71.05.620****Treatment records -- Informed consent for disclosure of information -- Court files and records.**

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

- (a) The name of the individual, agency, or organization to which the disclosure is to be made;
- (b) The name of the individual whose treatment record is being disclosed;
- (c) The purpose or need for the disclosure;
- (d) The specific type of information to be disclosed;
- (e) The time period during which the consent is effective;
- (f) The date on which the consent is signed; and
- (g) The signature of the individual or person legally authorized to give consent for the individual.

(2) The files and records of court proceedings under chapter 71.05 RCW shall be closed but shall be accessible to any individual who is the subject of a petition and to the individual's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services.

[1989 c 205 § 12.]

**NOTES:**

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.630****Treatment records -- Confidential -- Release.**

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

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

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

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

confidential.

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

(d) Pursuant to lawful order of a court.

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

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

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

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

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

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

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

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

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

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

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

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

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

[2000 c 75 § 5; 1989 c 205 § 13.]

**NOTES:**

**Intent -- 2000 c 75:** See note following RCW 71.05.445.

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.640**

**Treatment records -- Access procedures.**

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

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

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

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in RCW 71.05.610 through 71.05.690.

[2000 c 94 § 11; 1999 c 13 § 9. Prior: 1989 c 205 § 14.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.650****Treatment records -- Notation of and access to released data.**

Each time written information is released from a treatment record, the record's custodian shall make a notation in the record including the following: The name of the person to whom the information was released; the identification of the information released; the purpose of the release; and the date of the release. The patient shall have access to this release data.

[1989 c 205 § 15.]

**NOTES:**

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.660****Treatment records -- Privileged communications unaffected.**

Nothing in chapter 205, Laws of 1989 shall be construed to interfere with communications between physicians or psychologists and patients and attorneys and clients.

[1989 c 205 § 16.]

**NOTES:**

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.670****Treatment records -- Violations -- Civil action.**

Except as provided in RCW 4.24.550, any person, including the state or any political subdivision of the state, violating RCW 71.05.610 through 71.05.690 shall be subject to the provisions of RCW 71.05.440.

[1999 c 13 § 10. Prior: 1990 c 3 § 115; 1989 c 205 § 17.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

**Index, part headings not law -- Severability -- Effective dates -- Application -- 1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.680****Treatment records -- Access under false pretenses, penalty.**

Any person who requests or obtains confidential information pursuant to RCW 71.05.610 through 71.05.690 under false pretenses shall be guilty of a gross misdemeanor.

[1999 c 13 § 11. Prior: 1989 c 205 § 18.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.690**

**Treatment records -- Rules.**

The department shall adopt rules to implement RCW 71.05.610 through 71.05.680.

[1999 c 13 § 12. Prior: 1989 c 205 § 19.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date -- 1989 c 205 §§ 11-19:** See note following RCW 71.05.610.

**RCW 71.05.900**

**Severability -- 1973 1st ex.s. c 142.**

If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected.

[1973 1st ex.s. c 142 § 63.]

**RCW 71.05.910**

**Construction -- 1973 1st ex.s. c 142.**

Sections 6 through 63 of this 1973 amendatory act shall constitute a new chapter in Title 71 RCW, and shall be considered the successor to those sections of chapter 71.02 RCW repealed by this 1973 amendatory act.

[1973 1st ex.s. c 142 § 64.]

**RCW 71.05.920**

**Section headings not part of the law.**

Section headings as used in sections 6 through 63 of this 1973 amendatory act shall not constitute any part of law.

[1973 1st ex.s. c 142 § 65.]

<http://www.leg.wa.gov/rcw/index.cfm?fuseaction=chapter&chapter=71.05&RequestTimeout=500>

11/17/2003

**RCW 71.05.930**

**Effective date -- 1973 1st ex.s. c 142.**

This 1973 amendatory act shall take effect on January 1, 1974.

[1973 1st ex.s. c 142 § 67.]

**RCW 71.05.940**

**Equal application of 1989 c 420 -- Evaluation for developmental disability.**

The provisions of chapter 420, Laws of 1989 shall apply equally to persons in the custody of the department on May 13, 1989, who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities.

[1999 c 13 § 13; 1989 c 420 § 18.]

**NOTES:**

**Purpose -- Construction -- 1999 c 13:** See note following RCW 10.77.010.

# **APPENDIX B**

**WAC 388-865-0203 Allocation formula for state hospital beds.** The mental health division (MHD) allocates nonforensic adult beds at the state hospital utilized by the regional support network (RSN) based on the number of beds funded by the Legislature at that hospital.

(1) The allocation formula is  $(M \times 40\%) + (U \times 35\%) + (P \times 25\%) \times F$ .

(a) M is the average number of Medicaid eligible persons in the RSN during the period of January to December prior to the start of the biennium, divided by the average number of Medicaid eligible persons at each state hospital catchment area (westside for western state hospital and eastside for eastern state hospital) during the same period;

(b) U is the number of each regional support network's average daily census at the state hospital during the period of January to December prior to the start of each biennium divided by the average daily census at the hospital based on the utilization of beds by the regional support network included in the hospital catchment area during the same period;

(c) P is the percent of the general population that resides within the RSN based on the most recent population estimate on December 1 of the year prior to the start of the biennium divided by the general population in the hospital catchment area at the same time;

(d) F is the total number of funded nonforensic beds at each state hospital (westside for western state hospital and eastside for eastern state hospital);

(e) The MHD will project and distribute tentative allocations upon issuance of the Governor's budget, and upon enactment of the Legislative budget. The operative allocation will be made and distributed at the start of each fiscal year.

(2) This formula will be phased in as follows:

(a) For July 1, 2001 to June 30, 2002, twenty five percent of the bed allocation will be based on the new formula, and seventy five percent based on the 1999-2001 allocation;

(b) For July 1, 2002 to June 30, 2003, fifty percent of the allocation will be based on the new formula and fifty percent based on the 1999-2001 allocation;

(c) For July 1, 2003 to June 30, 2004, seventy-five percent of the allocation will be based on the new formula and twenty-five percent based on the 1999-2001 allocation;

(d) For July 1, 2004 to June 30, 2005 one hundred percent of the allocation will be based on the new formula;

(e) The formula will be recalculated on or about April 4, 2005 and each biennium thereafter based on data that is current at that time.

(3) If the in-residence census exceeds the funded capacity on any day or days within the fiscal year, the MHD will assess liquidated damages calculated on the following formula:

(a) Only RSNs who are in excess of their individual allocated census on the day or each day of over census will be assessed liquidated damages;

(b) The amount of liquidated damages charged for each day will be the number of beds over the funded capacity of the hospital multiplied by the state hospital daily bed charge consistent with RCW 43.20B.325;

(c) The amount of liquidated damages charged to each RSN will be a percentage based on the number of beds over their allocation divided by the total number of beds over the funded capacity on the day or each day of over census;

(d) The liquidated damages will be recovered by the MHD by a deduction from the monthly payment made by the MHD two months after the end of the month in which the in residence census exceeded the state bed allocation of that RSN.

[Statutory Authority: RCW 71.05.560, 71.24.035 (5)(c), 71.34.800, 9.41.047, 43.20B.020, and 43.20B.335. 01-12-047, § 388-865-0203, filed 5/31/01, effective 7/1/01.]

# **APPENDIX C**



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**I. MATTERS RESOLVED PRIOR TO TRIAL**

This matter came before the Court for trial on November 10, 14-17, and 21-23, 2005. Certain claims and counterclaims were resolved or partially resolved by pre-trial orders as indicated below. All references are to plaintiffs' Fourth Amended Complaint and Defendants' Answer thereto.

**Claim A - Failure to Provide Adequate Care and Individualized Treatment.**

All claims under this cause of action were compromised or dismissed, as reflected in the Order of Enforcement entered September 9, 2005 and Order Granting Plaintiffs' Motion for Partial Voluntary Nonsuit entered October 7, 2005.

**Claim B - Due Process Violations**

Portions of plaintiffs' claims under this cause of action were compromised or dismissed, as reflected in the Order of Enforcement entered September 9, 2005 and the Order Re Cross Motions for Summary Judgment on Long Term Care Patients entered October 7, 2005. The claim under this cause of action relating to "alleged violation of substantive due process rights for defendants' failure to admit patients to Western State Hospital committed under the ITA for 90 or 180 days" was abandoned by the Plaintiffs and is hereby dismissed.

**Claim C - Refusal to Accept Responsibility for Patients Committed to the**

**State's Custody for Long-Term Care** Liability issues regarding this claim were resolved by the Order Re Cross Motions for Summary Judgment on Long Term Care Patients entered October 7, 2005.

**Claim D - Failure to Make WSH Beds Available To PCRSN for Short Term**

**E&T Services** Claim dismissed on plaintiffs' motion for summary judgment, as reflected in the Order Granting In Part and Denying In Part Plaintiffs' Motion for Partial Summary Judgment Re "85% Requirement" entered November 10, 2005.

1           **Claim E - Failure to Fund Community and Residential Services – Unlawful**  
2 **Agency Action.** Voluntarily dismissed by plaintiff, as reflected in the Order Granting  
3 Plaintiffs' Motion for Partial Voluntary Nonsuit entered October 7 2005

4           **Claim F - Unfunded Mandates, Violation of RCW 43 135 060** Dismissed as  
5 moot with respect to long term patients by the Order Re Cross Motions for Summary  
6 Judgment on Long Term Care Patients entered October 7 2005, and voluntarily dismissed  
7 by plaintiffs in all other respects as reflected in the Order Granting Plaintiffs' Motion for  
8 Partial Voluntary Nonsuit entered October 7, 2005

9           **Claim G - Invalidity of Rule and Contractual Provision Pertaining to Bed**  
10 **Allocation and Liquidated Damages as applied to PCRSN** Invalidation of rule and  
11 contract provision, as well as liability issues resolved as reflected in the Order Granting  
12 Pierce County's Motion for Partial Summary Judgment on Liquidated Damages entered  
13 October 7, 2005

14           **Claim H - Alternative Claim, Failure to Comply with WAC 388-865-0203(e).**  
15 Voluntarily dismissed by plaintiffs as reflected in the Order Granting Plaintiffs' Motion  
16 for Partial Voluntary Nonsuit entered October 7, 2005

17           **Claim I - Failure to Comply with Requirements of WAC 388-865-0526 related**  
18 **to Single Bed Certification.** Resolved by the parties as reflected in the Order of  
19 Dismissal Re Single Bed Certification Claim entered November 8 2005

20           **Claim K - Invalidation of Laws of 2001, Ch. § 204(e) and WAC 388-865-0201**  
21 Dismissed on defendants motion, as reflected in the Court's September 30, 2005 Order  
22 Denying Plaintiffs' Motion for Partial Summary Judgment Re WAC 388-865-0201 and  
23 Laws of 2001 2<sup>nd</sup> Ex Sess, Ch 7, § 204(1)(E), and Granting Defendants Motion for  
24 Partial Summary Judgment Re WAC 388-865-0201 and Laws of 2001, 2<sup>nd</sup> Ex Sess, Ch  
25 7, § 204(1)(E)

26





1           2       PCRSN incurred unreimbursed costs as a result of the refusal by Western  
2 State Hospital (WSH) of patients committed to the custody of Department of Social and  
3 Health Services (DSHS) for 90 or 180 days under the Involuntary Treatment Act (ITA)

4           3       The amount of PCRSN's unreimbursed costs of caring for 90 and 180 day  
5 patients committed to the custody of the DSHS under the ITA who WSH declined to  
6 accept for census reasons is reasonably and appropriately determined by using the  
7 "Medicare Ratio of Costs to Charges" method presented through the testimony of Dr  
8 Neal Wallace and reflected in Trial Exhibit 1, or \$772,588.07 for those patients listed on  
9 Exhibit 1. Costs associated with these patients were calculated beginning at 12:01 AM on  
10 the day following WSH's refusal and continuing through the date of discharge from Puget  
11 Sound Behavioral Health (PSBH). PCRSN's unreimbursed costs are a liquidated sum

~~12           4       Plaintiffs are entitled to interest relating to the patients identified in Trial  
13 Exhibit number 1. Simple interest at 12% per annum 30 days after discharge. Simple  
14 Interest at 12% per annum running from 30 days after the discharge date through  
15 December 22, 2005, amounts to \$166,814.14 interest for the patients listed on Exhibit 1.  
16 Each day thereafter, the interest accrues in a daily amount of \$.254.~~

17           4       Sums which Pierce County received under the "Inpatient Emergency Pool"  
18 were not intended to compensate Pierce County for the costs of caring for patients  
19 committed by the courts to the custody of DSHS for 90 or 180 days pursuant to the  
20 Involuntary Treatment Act

21           B.       Liquidated Damages *5 BY AGREEMENT OF THE PARTIES UNREIMBURSED COSTS FOR 90/180 DAY PATIENTS BETWEEN OCTOBER 18, 2005 and DECEMBER 9, 2005 IS \$177,046.91*

22           7       On October 7, 2005, the Court entered an Order Granting Pierce County's  
23 Motion for Partial Summary Judgment on Liquidated Damages, including Findings of  
24 Fact and Conclusions of Law as required by RCW 34.05.574. The Findings of Fact set  
25 forth in that Order are incorporated herein as if set forth in full

26

1           8       Defendants withheld the sum of \$1,082,435.35 from payments to PCRSN  
2 as liquidated damages, as shown in Trial Exhibit 7. PCRSN was not economically  
3 harmed by the imposition of liquidated damages because it passed on the imposition of  
4 Liquidated Damages to its providers who in turn reduced services and thus, they were also  
5 not economically harmed.

6           ~~B. Simple Interest at 12% per annum from the date when PCRSN would~~  
7 ~~normally have received the withheld funds through the time of trial amounts to~~  
8 ~~\$132,980.15. Additional interest from and after November 30, 2005, accrues in the daily~~  
9 ~~amount of \$355.96.~~

10           10       The amount of liquidated damages withheld by Defendants from PCRSN  
11 was passed through to PCRSN's community mental health providers, who in turn reduced  
12 the level of mental health services provided. If the liquidated damages had not been  
13 withheld, these funds would have been paid to PCRSN and used for additional mental  
14 health services. C.   **Contract Process and Contract Terms.**

15           1       The State, instead of directing all funding resources to state-only  
16 non-Medicaid services, was using its funding resources to draw down more federal dollars  
17 than were needed to provide all of the required Medicaid services to Medicaid recipients  
18 within the state of Washington's mental health system. These unused Medicaid dollars  
19 are commonly referred to as "Medicaid savings" dollars. Washington's mental health  
20 system benefited because more federal matching dollars were brought into the state of  
21 Washington.

22           2       By failing to stop the process whereby the State used its resources to draw  
23 down additional federal dollars not needed to provide the Medicaid services to patients  
24 within the state of Washington, the federal government tacitly agreed to this use. The

1 biennial waivers between CMS and DSHS provide further evidence that the use of  
2 Medicaid funds was acceptable to the federal government

3           3       In the 01-03 and 03-05 biennia PCRSN contracted with DSHS to provide  
4 community mental health treatment services to both Medicaid and nonMedicaid  
5 recipients PCRSN objected to several aspects of the 2001-2003 and 2003-2005 RSN  
6 contracts prior to signing Pierce County made its objections to various aspects of the  
7 contracts through verbal exchanges, as well as written, e-mails, letters, and memorandum  
8 that commemorated or documented what the protests were about But it was not the  
9 features of the failure to provide sufficient state-only dollars to fund these contracts that  
10 were the subject of the protest or the objections  
11

12           4       Before signing the contracts, Pierce County knew that the contracts did not  
13 provide sufficient state-only funds to deliver all services Pierce County might provide  
14 under the contracts  
15

16           5       During the 01-03 contract period, Pierce County earnestly discussed  
17 terminating the contract with DSHS because it felt disadvantaged by the contract  
18

19           6       Pierce County realized that it was not required to sign the 01-03 or the 03-  
20 05 contracts and that it could terminate the contracts for convenience upon 90 days notice  
21

22           7       For the 01-03 and 03-05 contract period Pierce County RSN elected to  
23 sign that contracts despite the objections it raised  
24

25           8       DSHS contracted with Pierce County RSN to provide community mental  
26 health services within the amount of funding appropriated by the legislature The  
contracts identified specific services to be provided and the specific amounts that were  
available to provide those services Any services, and funds used by PCRSN to provide

1 services beyond the amount of state-only and/or Medicaid funds appropriated by the  
2 Legislature and allocated through the contracts and legislative appropriations were  
3 voluntarily provided

4  
5 9 Based on the total amount of funding appropriated by the Legislature and  
6 allocated to PCRSN under the contracts, it had available all of the financial resources it  
7 needed to pay for the services it provided under the 01-03 and 03-05 contracts

8 **D Federal Medicaid Law and Policy**

9 1 The general federal policy is that Medicaid dollars are to be used for  
10 Medicaid treatment services

11 2 In a 1998 letter from CMS (formerly known as HCFA) to Medicaid state  
12 directors CMS indicated that it would not permit the State to require Medicaid money to  
13 be used for non-Medicaid services CMS approved section 1915(b) waivers biennially  
14 Beginning July 1, 2005, CMS made it clear that Medicaid dollars were not to be used  
15 under any circumstances, voluntarily or mandated, to provide non-Medicaid services

16 3 During at least the interim between July 1, 2000 and before July 1, 2005,  
17 CMS tacitly permitted the use of Medicaid dollars for other services

18 4 By signing the 2001-2003 and 2003-2005 RSN contracts Pierce County  
19 RSN relied on Medicaid funds to pay for non-Medicaid services as was permitted by the  
20 federal government until July 1 2005 Pierce County knew that the contracts did not  
21 provide sufficient state-only funds to provide the non-Medicaid services required under  
22 the contract Sometime prior to July 1, 2005, CMS determined that it had been paying too  
23 much for Medicaid services in the State of Washington So, beginning July 1, 2005, CMS  
24 will pay less  
25  
26

1           5       As a way to meet its obligations to provide short-term inpatient care to both  
2 non-Medicaid and Medicaid recipients under RCW 71 24 300 and the contracts with  
3 DSHS in August 2000, PCRSN purchased Puget Sound Hospital, and has operated it  
4 since as Puget Sound Behavioral Health Hospital, which is an Institution for Mentally  
5 Disease (IMD) as defined by Medicaid

6           6       Plaintiffs withdrew the claim that the 01-03 and 03-05 Medicaid rates paid  
7 under the contracts by the Defendants did not meet the actuarial soundness requirement of  
8 federal Medicaid law and policy

9 **E.   PCRSN's use of the MMIS system and DSHS's subsequent reconciliation.**

10          1       The 01-03 and 03-05 contracts require PCRSN to authorize inpatient  
11 hospitalization for its consumers when medically necessary, and to pay for short-term  
12 community mental health inpatient care to PCRSN recipients out of the funds it receives  
13 under the contracts

14          2       The contracts require PCRSN to either pay community hospitals directly  
15 for care those facilities provide to PCRSN authorized consumers, or PCRSN can elect to  
16 allow the community hospitals to submit an inpatient bill to DSHS through the MMIS  
17 payment system   MMIS is a separate accounting and billing system from the DSHS  
18 Mental Health Division's accounting system for the Regional Support Networks

19          3       DSHS' decision to allow community hospitals, caring for PCRSN patients  
20 to use the MMIS system, was made as an administrative convenience because of the  
21 complicated and time consuming process involved in the hospital billing process   If  
22 PCRSN elects to have the community hospitals bill through the MMIS payment system,  
23 DSHS is then acting as an intermediary   Thus, when community hospitals receive  
24 payment directly from the MMIS system for PCRSN authorized patients, the DSHS  
25 Mental Health Division must reconcile the funds advanced through the MMIS system  
26

1           4       The DSHS Mental Health Division reconciles the funds advanced through  
2 the MMIS system from the contracted funds PCRSN receives through the regular  
3 monthly payment process by which the Mental Health Division distributes funds to  
4 PCRSN

5           5       For all relevant periods PCRSN elected to have community hospitals,  
6 other than Puget Sound Behavioral Health hospital use the MMIS billing and payment  
7 system for PCRSN authorized patients cared for in those other community hospitals In  
8 May 2003, PCRSN authorized Puget Sound Behavioral Health to use the MMIS billing  
9 and payment system Prior to that time, PCRSN paid Puget Sound Behavioral Health  
10 hospital directly for the care it provided to PCRSN authorized patients

11           6       Community hospitals, including Puget Sound Behavioral Health, have up  
12 to 12 months in which to submit the bill for inpatient care to the MMIS system, and  
13 PCRSN has a total of 18 months from the date of admission in which to dispute whether a  
14 particular patient is really a PCRSN patient or whether that patient belongs to another  
15 Regional Support Network This process is referred to as the '18 month reconciliation  
16 process '

17           7       When PCRSN elects to use the MMIS system and DSHS advances funds to  
18 Puget Sound Behavioral Health or other community hospitals through the MMIS system,  
19 and the amount paid by MMIS exceeds the amount of funds withheld by DSHS for that  
20 purpose, PCRSN receives more funds than the amount of funds appropriated by the  
21 Legislature and provided for in the contracts

22           8       The Mental Health Division has continued the 18 month reconciliation  
23 process for PCRSN s inpatient claims incurred during the 2003-2005 contract period  
24 using funds appropriated by the Legislature for the 05-07 bienna

#### 25                                   **IV CONCLUSIONS OF LAW**

##### 26   **A       Long Term Patients.**

1           1       On October 7, 2005 the Court entered an Order re Cross Motions for  
2 Summary Judgment on Long Term Patients, including Findings of Fact and Conclusions  
3 of Law as required by RCW 34 05 574 The Conclusions of Law set forth in that Order  
4 are incorporated herein as if set forth in full

5           2       Pursuant to the October 7, 2005 order, PCRSN is entitled to recover under a  
6 quasi contract or breach of contract claim, the unreimbursed costs of caring for patients  
7 committed by the courts to the custody of DSHS for 90 or 180 days pursuant to the  
8 Involuntary Treatment Act Plaintiffs have no obligation under the statutes or their  
9 contract with the state, to provide care to long-term patients Defendants breached their  
10 contracts with PCRSN by mistakenly interpreting those contracts as shifting responsibility  
11 for 90 or 180 day patients to PCRSN or alternatively under a quasi-contract theory

12           3       Under quasi-contract or breach of contract, the unreimbursed costs claimed by  
13 PCRSN and depicted in Trial Exhibit 1 are reasonable and appropriate

14           4       The appropriate measure of plaintiffs' unreimbursed costs is through the  
15 application of the Medicare Ratio of Cost To Charges to the charges incurred from 12 01  
16 a m following the day of commitment if WSH declines to timely admit the patient until  
17 the date the patient was discharged from PSBH The unreimbursed costs claimed by  
18 PCRSN and depicted in Trial Exhibit 1 and as set forth in the Findings are reasonable and  
19 appropriate

20           5       With respect to 90 or 180 day patients committed to the custody of DSHS  
21 whom Western State Hospital declined to accept for census-related reasons subsequent to  
22 the last date indicated on Exhibit 1, defendants must compensate PCRSN for the  
23 unreimbursed costs of caring for those patients using the Medicare Ratio of Costs to  
24 Charges methodology set forth in Trial Exhibit 1

25           6       PCRSN is entitled to recover the amount of unreimbursed costs set forth in  
26 the Findings and ~~pre-judgment interest on its unreimbursed costs from the date on which~~

1 a bill would have been issued at the rate of 12 % per annum, and calculated as set forth

2 ~~in the Findings.~~ **PLAINTIFF'S ARE NOT ENTITLED TO PRE & POST JUDGMENT**  
3 **INTEREST BECAUSE THE STATE HAS NOT WAIVED SOVEREIGN IMMUNITY AS APPLIED TO THIS CASE**

3 B. Liquidated Damages

4 1 PCRSN is entitled to a refund of the amount of liquidated damages  
5 withheld

6 ~~2 PCRSN is entitled to recover pre-judgment interest on the amounts of~~  
7 ~~liquidated damages withheld in the amounts and as calculated in Trial Exhibit 3.~~

8 3 Although neither the plaintiffs nor their providers suffered a loss from the  
9 withholding of liquidated damages, the State should in no way benefit from wrongfully  
10 withholding the liquidated damages from the plaintiffs As a result, the Court has  
11 fashioned an equitable remedy the PCRSN s entitlement to a refund of liquidated damages  
12 paid and interest thereon is conditioned upon the use of the refunded liquidated damages  
13 and interest to provide new or additional mental health services within its service area  
14 Upon payment to PCRSN by Defendants of the amount representing the unlawfully  
15 withheld liquidated damages and interest thereon, PCRSN must hold those funds and not  
16 disburse them until a plan for their use is either approved by Defendants or by this Court  
17 Defendants shall not unreasonably fail to approve such a plan

18 C Contract Process and Contract Terms

19 1 RCW 71 24 035 is the statute whereby the Legislature gave DSHS and the  
20 Mental Health Division authority to contract for community mental health services within  
21 the funds appropriated by the Legislature This statute along with RCW 43 88 requires  
22 DSHS to contract for community mental health services within the amount appropriated  
23 by the Legislature for each biennium

24 2 RCW 71 24 300 placed requirements on Regional Support Networks to  
25 provide certain community services, again, within available resources and RCW  
26 71 24 025 has defined available resources There was confusion, until most recently, as to

1 whether the State's share of Medicaid dollars was included within available resources It  
2 is now clear that both the federal Medicaid dollars and the state funds used to match the  
3 federal Medicaid dollars are not included within the definition of available resources

4 3 The Pierce County Plaintiffs were not legally required to enter into the 01-  
5 03 and 03-05 contracts Despite any concerns or issues Pierce County had with the terms  
6 or process used for these contracts, it voluntarily and with full knowledge, entered into  
7 these contracts

8 4 According to RCW 71 24 300, the Pierce County RSN had no obligation to  
9 provide any mental health treatment resources for non-Medicaid patients beyond the  
10 resources that were available according to the statutory provision But in no case did  
11 Pierce County have the right to be compensated for services it did provide beyond the  
12 state-only resources provided under the contract because it chose to do so

13 5 If Pierce County believed that it did not have sufficient resources required  
14 by statute for the provision of these services its remedy was to not provide the services  
15 The remedy was not to provide millions of dollars' worth of services specifically  
16 identified in the contract with specific contractual amounts and then to later seek  
17 additional reimbursement for the already provided services

18 6 The remedy would have been for Pierce County not to have provided those  
19 services if it believed that they were not within the statutory definition Pierce County had  
20 a legal right to terminate the contracts by giving only 90 days notice and voluntarily  
21 chose not to terminate

22 7 The 01-03 and 03-05 contracts did not incorporate terms unlawful under  
23 ch 71 24 RCW

24 **D Contracts and Medicaid Law and Policy.**

25 1 During the relevant time period between July 1, 2000 and before July 1  
26 2005, CMS tacitly permitted the use of Medicaid dollars for nonMedicaid services

1           2       The 01-03 and 03-05 contracts allocated state-only money and Medicaid  
2 money appropriated by the Legislature Pierce County knew, before signing the contracts.  
3 that there would not be enough state-only money to cover all the contract services and that  
4 it would be using Medicaid funds provided under the waiver to cover nonMedicaid  
5 services

6           3       Pierce County was not legally required to sign the 01-03 and 03-05  
7 contracts

8           4       Pierce County's entry into these contracts was a voluntary acceptance and  
9 determination as to how all of the funds provided for under the contracts both Medicaid  
10 and state-only funds, would in fact be used

11           5       The 01-03 and 03-05 contracts are not invalid and do not violate federal  
12 policy in the expenditure of what has been referred to in this trial as Medicaid savings for  
13 non-Medicaid services

14 **E. Reconciliation Process**

15           1       Starting July 1, 2005 Medicaid funds cannot be used <sup>by the state</sup> to pay for or  
16 reconcile nonMedicaid services

17           2       The 05-07 legislative appropriation for state-only mental health services is  
18 not to be used <sup>by the state</sup> to pay for services provided in previous biennia <sup>or reconcile</sup> *BSIP*

19           3       By using the MMIS billing and payment system, Pierce County has been  
20 advanced funds beyond that appropriated by the legislature and allocated for the 01-03  
21 and 03-05 contracts which it must pay back

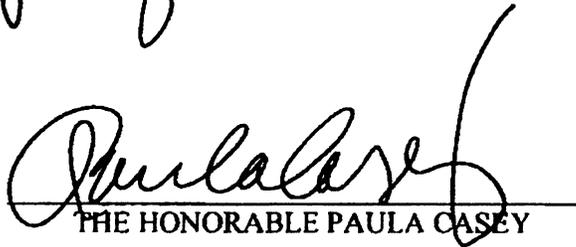
22           4       The Defendants may send a bill to Pierce County monthly for past inpatient  
23 payments that it advanced through the MMIS system but not yet reconciled Such bill  
24 shall not be sent until the particular 18 month reconciliation period has been exhausted  
25 and Pierce County is obligated to pay the bill within a reasonable amount of time after  
26 presentment not to exceed sixty (60) days

1 **F. Fees and Costs**

2 1 Each party pays its own attorney fees and costs associated with this  
3 lawsuit

4 2 To the extent not specifically addressed above, all claims and  
5 counterclaims asserted by the Parties are dismissed with prejudice and without costs

6 DATED this 20<sup>th</sup> day of January, 2006

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10   
11 THE HONORABLE PAULA CASEY

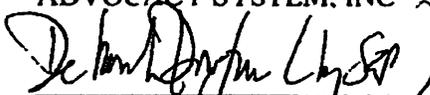
12 Presented by

13 BENNETT, BIGELOW & LEEDOM P S  
14 AND

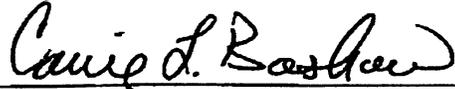
15   
16 MICHAEL MADDEN, WSBA # 8747  
17 SANFORD E PITLER, WSBA # 16567  
18 LINDA M COLEMAN WSBA # 32355  
19 MARIE R WESTERMEIER, WSBA #18623  
20 Attorneys for Plaintiff

WASHINGTON PROTECTION

ADVOCACY SYSTEM, INC

21   
22 DEBORAH A DORFMAN,  
23 WSBA #23823  
24 DAVID B GIRARD, WSBA #1765  
25 Attorneys for Plaintiff WPAS

19 ROB MCKENNA  
20 Attorney General

21   
22 CARRIE L BASHAW, WSBA # 20253  
23 WILLIAM G CLARK WSBA # 9234  
24 ERIC NELSON, WSBA #27183  
25 IAN M BAUER WSBA #35563  
26 Assistant Attorney General  
Attorneys for Defendants

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# **APPENDIX D**

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.

06 JAN 23 AM 8:46

BETTY J. GOULD, CLERK

BY 5  
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HONORABLE PAULA CASEY

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

PIERCE COUNTY, et al.,

NO. 03-2-00918-8

Plaintiffs,

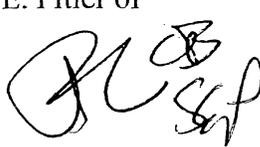
JUDGMENT AND ORDER

v.

STATE OF WASHINGTON, et al.,

Defendants.

JUDGMENT SUMMARY

1. Judgment Creditor: Pierce County Regional Support Network
2. Judgment Creditor's Attorney: Michael Madden and Sanford E. Pitler of Bennett Bigelow & Leedom, P.S.
3. Judgment Debtor: The State of Washington
4. Amount of Judgment: ~~\$1,855,023.42~~ *2,032,070.33* 
5. Prejudgment Interest: ~~NONE~~
  - A. ~~Liquidated Damages: \$132,980.15 calculated through November 30, 2005 and accrues at \$355.90 per day through the date of this Judgment.~~
  - B. ~~90 and 180 day patients identified in Trial Exhibit 1: \$163,008.63 calculated through November 7, 2005, and accruing at \$254.00 per day thereafter.~~
6. Judgment Interest: ~~\$609.90 per day until payment.~~ *None*
7. Costs and Attorneys Fees: None.

1 This matter came before the Court for trial on November 10, 14-17, and 21-23, 2005.  
2 Prior to trial, the Court entered a number of orders granting partial relief and dismissing  
3 certain claims and counterclaims. The Court entered Findings of Fact and Conclusions of  
4 Law on January 6, 2006, in which it addressed all remaining issues and specified the  
5 disposition of all of plaintiff's claims and defendants' counterclaims and claims for offset. In  
6 accordance with those Findings and Conclusions and its earlier orders referenced therein, the  
7 Court grants judgment as follows:

8 A. Plaintiff Pierce County Regional Support Network shall have judgment  
9 against the State of Washington in the amount of \$772,588.07, representing unreimbursed  
10 costs of caring for patients committed to Western State Hospital for 90 or 180 days under the  
11 Involuntary Treatment Act that remained at PSBH through October 18, 2005, plus \$177,046.91  
12 FOR 90/180 DAY PATIENTS THAT REMAIN AT PSBH BETWEEN OCT. 18, 2005 & DEC. 9, 2005.

~~B. Plaintiff Pierce County Regional Support Network shall also have judgment  
13 against the State of Washington in the amount of \$163,008.63 representing prejudgment  
14 interest (at 12% per annum) on unreimbursed costs (see Paragraph A above) calculated  
15 through November 7, 2005 for patients that remained at PSBH through October 18, 2005,  
16 with interest accruing thereafter at \$254.00 per day until the date of this Judgment, and at  
17 \$254.00 per day in Post-Judgment interest until paid as stated in paragraph A above.~~

18 B Plaintiff Pierce County Regional Support Network shall have judgment  
19 against the State of Washington in the amount of \$ 1,082,435.35, representing liquidated  
20 damages withheld from payments due to Pierce County Regional Support Network, provided  
21 that upon payment to PCRSN by Defendants of the amount representing the unlawfully  
22 withheld liquidated damages and interest thereon, PCRSN must hold those funds and not  
23 disburse them until a plan for their use is either approved by Defendants or by this Court.  
24 Defendants shall not unreasonably fail to approve such a plan.

~~D. Plaintiff Pierce County Regional Support Network shall also have judgment  
25 against the State of Washington in the amount of \$132,980.00, representing prejudgment  
26~~

JB  
JW

1 ~~interest (12% per annum) on liquidated damages (see Paragraph C above), calculated through~~  
2 ~~November 30, 2005, with interest accruing thereafter at \$355.90 per day until the date of this~~  
3 ~~Judgment, and at \$355.90 per day in Post-Judgment interest until paid.~~

4 *J.C.* In accordance with this Court's Order Re Cross Motions for Summary  
5 Judgment on Long Term Care Patients entered October 7, 2005 and effective December 9,  
6 2005, pursuant to RCW 34.05.594 and Ch. 71.05 RCW, Defendants are enjoined from  
7 declining to timely accept adult patients committed pursuant to Ch. 71.05 RCW for 90 or 180  
8 days who are at Puget Sound Behavioral Health or that Pierce County RSN is responsible for  
9 at the time of commitment, subject to the conditions set forth below:

10 1. Timely acceptance means that WSH must accept 90 or 180 day  
11 long-term ITA patients where (i) PSBH or PCRSN notifies WSH that an order  
12 of commitment has been entered and that the long-term patient is ready for  
13 transfer, and (ii) PSBH or PCRSN is able to transport the patient for arrival at  
14 WSH at a reasonable time, unless otherwise agreed to by the respective  
15 representatives. When PSBH or Pierce County RSN is unable to transport the  
16 patient for arrival by a reasonable time on the day of the court order, the  
17 patient shall be transported the next day.

18 2. Where, at the time WSH is notified that an order of  
19 commitment has been entered, a patient committed by a court to the custody of  
20 DSHS for 90 or 180 days has a medical condition that WSH is unable to  
21 provide for, or if there is an issue of patient safety involving factors other than  
22 WSH's census that makes it medically inappropriate or unsafe to accept the  
23 patient at WSH, WSH or DSHS shall have a reasonable period of time to  
24 arrange for the necessary care for the patient elsewhere. The costs to be paid  
25 by DSHS regarding any patient that WSH is not able to admit because of  
26 medical or safety issues shall be determined by the application of the Medicare

*Handwritten initials/signature at top right.*

Ratio of Cost To Charges multiplied by the charges that accumulate for the patient from ~~the time~~ <sup>10:01 A.M. - THE DAY FOLLOWING THE REFUSAL</sup> WSH refused to admit the patient for medical or safety reasons to the date the patient is discharged from the facility they are in.

*FD* In accordance with this Court's Order Granting Pierce County's Motion for Partial Summary Judgment on Liquidated Damages entered October 7, 2005, pursuant to RCW 34.05.574, Defendants are enjoined from further enforcement of automatic liquidated damages provisions of WAC 388-865-0203 and related provisions of its contracts with Pierce County RSN as currently written.

*Q.V.* Pursuant to RCW 34.05.594 and Ch. 71.24 RCW, Defendants are enjoined, beginning July 1, 2005, from using Medicaid or non-Medicaid funds to pay for or reconcile ~~previously delivered~~ <sup>DELIVERED PRIOR TO JULY 1, 2005.</sup> non-Medicaid services. Nevertheless, consistent with the Findings and Conclusions entered by the Court, the Defendants ~~shall have the opportunity to~~ <sup>MAY</sup> bill Pierce County RSN on a monthly basis for inpatient claims occurring prior to July 1, 2005, that Defendants advanced through the MMIS system prior to July 1, 2005, but are not yet reconciled.

H. Plaintiffs are also ordered to pay monthly bills presented by the Defendants for those inpatient payments that it advanced through the MMIS system, but not yet reconciled. Such bill shall not be sent until the full 18-month reconciliation period has been exhausted and Pierce County is obligated to pay the bill within ~~30~~ <sup>60</sup> days of presentment.

I. Except as provided herein and in the Court's Findings of Fact and Conclusions of Law, the complaint and counterclaim herein are dismissed with Prejudice.

J. All parties shall bear their own costs.

DATED this 20 day of January, 2006.

*Handwritten signature of Paula Casey*  
\_\_\_\_\_  
HONORABLE PAULA CASEY  
Thurston County Superior Court

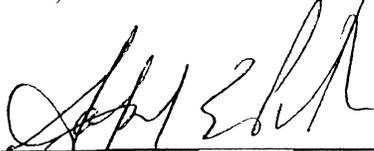
LAW OFFICES  
BENNETT BIGELOW & LEEDOM, P.S.  
1700 Seventh Avenue, Suite 1900  
Seattle, Washington 98101  
T: (206) 622-5511 / F: (206) 622-8986

4341

1 Presented by:

2 BENNETT, BIGELOW & LEEDOM, P.S.

WASHINGTON PROTECTION AND  
ADVOCACY SYSTEM, INC.

3  
4 



5 MICHAEL MADDEN, WSBA # 8747  
6 SANFORD H. PITLER, WSBA # 16567  
7 LINDA M. COLEMAN, WSBA # 32355  
8 MARIE R. WESTERMEIER, WSBA #18623  
9 Attorneys for Plaintiff

DEBORAH A. DORFMAN,  
WSBA #23823  
DAVID B. GIRARD, WSBA #1765  
Attorneys for Plaintiff WPAS

10 Copy received:

11 ROB MCKENNA  
12 Attorney General

13 

14 CARRIE L. BASHAW, WSBA # 20253  
15 WILLIAM G. CLARK, WSBA # 9234  
16 ERIC NELSON, WSBA #27183  
17 IAN M. BAUER, WSBA #35563  
18 Assistant Attorney General  
19 Attorneys for Defendants

20  
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# **APPENDIX E**

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THURSTON COUNTY, WASH  
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BY [handwritten 3] DEPUTY

<input type="checkbox"/>	EXPEDITE
<input checked="" type="checkbox"/>	Hearing is set
Date	<u>October 21, 2005</u>
Time	<u>9 00 a m</u>
Judge/Calendar	<u>The Honorable Paula Casey</u>

Hon. Paula Casey

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

PIERCE COUNTY, a political subdivision of  
the State of Washington, PIERCE COUNTY  
REGIONAL SUPPORT NETWORK, a  
division of the Pierce County Department of  
Human Services, and PUGET SOUND  
BEHAVIORAL HEALTH, a psychiatric  
hospital owned and operated by Pierce County  
Regional Support Network, WASHINGTON  
PROTECTION AND ADVOCACY SYSTEM,  
INC .

Plaintiffs,

vs.

STATE OF WASHINGTON, STATE OF  
WASHINGTON, DEPARTMENT OF SOCIAL  
AND HEALTH SERVICES; MARYANNE  
LINDEBLAD in her official capacity as Acting  
Director of the Mental Health Division, and  
ANDREW PHILLIPS in his official capacity as  
Chief Executive Officer of WESTERN STATE  
HOSPITAL.

Defendants

NO 03-2-00918-8

ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT RE  
"85% REQUIREMENT"

2238

1 THIS MATTER having come before the above-entitled Court on the Pierce Plaintiffs'  
2 Motion for Partial Summary Judgment Re "85% Requirement," the undersigned, having read  
3 and considered Plaintiffs' Motion, Defendants' Opposition, and Plaintiffs' Reply pleadings,  
4 including the declarations and exhibits offered by the parties in support thereof, and having  
5 heard oral argument, and having found that there are no genuine issues of material fact, now,  
6 therefore,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Pierce Plaintiffs'  
8 Motion for Partial Summary Judgment Re "85% Requirement" is DENIED, except to the extent  
9 that it seeks dismissal of Defendants' Counterclaim 3(f) Defendants' Counterclaim 3(f) on  
10 p 11 of Defendants' First Amended Answer to Plaintiffs' Fourth Amended Complaint is  
11 dismissed with prejudice

12 The following additional documents were brought to the court's attention as it  
13 considered this motion

- 14 1) Declaration of David Stewart and Exhibit 1 attached thereto,
- 15 2) Declaration of David Dula,
- 16 3) Declaration of Marc Westermeier and exhibits attached thereto;
- 17 4) Declaration of Diana Fitschen in Support of Plaintiffs' Motion for Summary  
18 Judgment on Liquidated Damages;
- 19 5) Declaration of Ian Bauer and exhibits attached thereto filed October 10, 2005;
- 20 6) Declaration of Rita Shaefer and exhibits attached thereto filed October 10, 2005;
- 21 7) Declaration of Richard Onizuka and exhibits attached thereto filed October 10, 2005;
- 22 8) Declaration of Janis R. Sigman and exhibits attached thereto filed October 10, 2005;
- 23 9) Reply Declaration of Marie Westermeier and exhibits attached thereto;
- 24 10) 2<sup>nd</sup> Bauer Declaration and exhibits attached thereto filed October 19, 2005;
- 25 11) Declaration of Weston and exhibits attached thereto, filed September 23, 2005,
- 26 12) Declaration of Nelson and exhibits attached thereto, filed September 23, 2005,

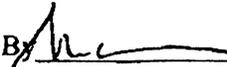
1 13) Declaration of Norsen and exhibits attached thereto, filed September 23, 2005, and  
2 14) 2<sup>nd</sup> Gosney Declaration, Ex. 4, filed October 17, 2005.

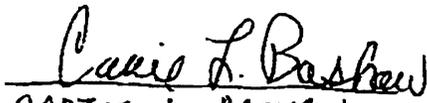
3  
4 DONE IN OPEN COURT this 10<sup>th</sup> day of Nov, 2005

5  
6   
7 THE HONORABLE PAULA CASEY

8 Presented By:

9 BENNETT BIGELOW & LEEDOM, P S

10  
11 By   
12 Sanford Pitler, WSBA #16567  
13 Michael Madden, WSBA # 08747  
14 Marie Westermeyer, WSBA #18623  
15 Linda Coleman, WSBA #32355  
16 Attorneys for Plaintiffs Pierce County,  
17 Pierce County Regional Support Network,  
18 and Puget Sound Behavioral Health

  
19 CARRIE L BASHAW #20753  
20 ASSISTANT ATTORNEY GEN  
21 ATTORNEY FOR DEFENDANTS

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26  
ORDER GRANTING IN PART PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT RE "85%  
REQUIREMENT- Page 3

LAW OFFICES  
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1700 Seventh Avenue Suite 1900  
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SCANNED

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2240

COURT OF APPEALS  
DIVISION III

**CERTIFICATE OF SERVICE**

07 MAR 12 PM 4:00

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

I, Jennifer Lenox, declare as follows:

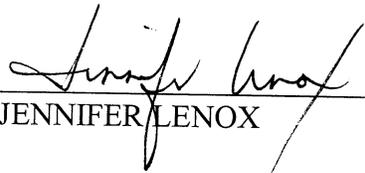
I am a resident of the State of Washington, over eighteen years of age, and not a party to the within action. My business address is Bennett, Bigelow & Leedom, P.S., 1700 Seventh Avenue, Suite 1900, Seattle, WA 98101-1355.

On March 12, 2007, I caused the following document entitled: **BRIEF OF RESPONDENTS/CROSS-APPELLANTS** [including Appendices A-E] to be served by hand delivery by ABC Legal Services on today's date, directed to:

**Carrie L. Bashaw, Esq.**  
**Eric Nelson, Esq.**  
**William L. Williams, Esq.**  
**Ian M. Bauer, Esq.**  
**Office of the Attorney General**  
**7141 Cleanwater Lane SW**  
**Olympia, WA 98501**

**Deborah A. Dorfman, Esq.**  
**David B. Girard, Esq.**  
**Stacie B. Siebrecht, Esq.**  
**Washington Protection and**  
**Advocacy System**  
**315 Fifth Avenue South, Suite 850**  
**Seattle WA 98104**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Seattle, Washington, on March 12, 2007.

  
\_\_\_\_\_  
JENNIFER LENOX

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CERTIFICATE OF SERVICE