
HOUSE BILL 1318

State of Washington

57th Legislature

2001 Regular Session

By Representatives Cody, Ballasiotes, Schual-Berke, Campbell, Tokuda, Kagi, Edmonds, Keiser, Santos, Edwards, Veloria and McIntire

Read first time 01/23/2001. Referred to Committee on Health Care.

1 AN ACT Relating to psychiatric outpatient commitment; amending RCW
2 71.05.020; and adding new sections to chapter 71.05 RCW.

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

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

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

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

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

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

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

1 (5) "Conditional release" means a revocable modification of a
2 commitment, which may be revoked upon violation of any of its terms;
3 (6) "County designated mental health professional" means a mental
4 health professional appointed by the county to perform the duties
5 specified in this chapter;
6 (7) "Custody" means involuntary detention under the provisions of
7 this chapter or chapter 10.77 RCW, uninterrupted by any period of
8 unconditional release from commitment from a facility providing
9 involuntary care and treatment;
10 (8) "Department" means the department of social and health
11 services;
12 (9) "Detention" or "detain" means the lawful confinement of a
13 person, under the provisions of this chapter;
14 (10) "Developmental disabilities professional" means a person who
15 has specialized training and three years of experience in directly
16 treating or working with persons with developmental disabilities and is
17 a psychiatrist, psychologist, or social worker, and such other
18 developmental disabilities professionals as may be defined by rules
19 adopted by the secretary;
20 (11) "Developmental disability" means that condition defined in RCW
21 71A.10.020(3);
22 (12) "Discharge" means the termination of hospital medical
23 authority. The commitment may remain in place, be terminated, or be
24 amended by court order;
25 (13) "Evaluation and treatment facility" means any facility which
26 can provide directly, or by direct arrangement with other public or
27 private agencies, emergency evaluation and treatment, outpatient care,
28 and timely and appropriate inpatient care to persons suffering from a
29 mental disorder, and which is certified as such by the department. A
30 physically separate and separately operated portion of a state hospital
31 may be designated as an evaluation and treatment facility. A facility
32 which is part of, or operated by, the department or any federal agency
33 will not require certification. No correctional institution or
34 facility, or jail, shall be an evaluation and treatment facility within
35 the meaning of this chapter;
36 (14) "Gravely disabled" means a condition in which a person, as a
37 result of a mental disorder: (a) Is in danger of serious physical harm
38 resulting from a failure to provide for his or her essential human
39 needs of health or safety; or (b) manifests severe deterioration in

1 routine functioning evidenced by repeated and escalating loss of
2 cognitive or volitional control over his or her actions and is not
3 receiving such care as is essential for his or her health or safety;

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

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

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

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

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

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

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

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

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

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

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

38 (19) "Likelihood of serious harm" means:

1 (a) A substantial risk that: (i) Physical harm will be inflicted
2 by an individual upon his or her own person, as evidenced by threats or
3 attempts to commit suicide or inflict physical harm on oneself; (ii)
4 physical harm will be inflicted by an individual upon another, as
5 evidenced by behavior which has caused such harm or which places
6 another person or persons in reasonable fear of sustaining such harm;
7 or (iii) physical harm will be inflicted by an individual upon the
8 property of others, as evidenced by behavior which has caused
9 substantial loss or damage to the property of others; or

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

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

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

19 (22) "Outpatient commitment" means court-ordered outpatient
20 treatment for a person who:

21 (a) Has had more than two involuntary inpatient or outpatient
22 detentions within the last twenty-four months;

23 (b) Is suffering from a severe mental disorder;

24 (c) Is capable of surviving safely in the community with
25 supervision;

26 (d) Based on treatment history and current behavior, is now in need
27 of treatment in order to prevent a relapse or deterioration that would
28 predictably result in the person becoming imminently dangerous or in
29 need of hospitalization;

30 (e) Is unable to make an informed decision to seek or comply with
31 recommended treatment; and

32 (f) Has a reasonable prospect that outpatient treatment will be
33 beneficial;

34 (23) "Outpatient treatment" includes: Medication; individual or
35 group therapy; day or partial day programming activities; services and
36 training, including educational and vocational activities; supervision
37 of living arrangements; and other services prescribed to either
38 alleviate the person's disorder or disability, to maintain semi-

1 independent functioning, or to prevent further deterioration that may
2 reasonably be predicted to result in the need for hospitalization;

3 (24) "Outpatient treatment psychiatrist or agency," "supervising
4 psychiatrist, agency, or provider," or similar terms mean the
5 psychiatrist or agency who is responsible for the management and
6 supervision of a person's outpatient treatment under order of the
7 court;

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

12 ~~((+23+))~~ (26) "Private agency" means any person, partnership,
13 corporation, or association that is not a public agency, whether or not
14 financed in whole or in part by public funds, which constitutes an
15 evaluation and treatment facility or private institution, hospital, or
16 sanitarium, which is conducted for, or includes a department or ward
17 conducted for, the care and treatment of persons who are mentally ill;

18 ~~((+24+))~~ (27) "Professional person" means a mental health
19 professional and shall also mean a physician, registered nurse, and
20 such others as may be defined by rules adopted by the secretary
21 pursuant to the provisions of this chapter;

22 ~~((+25+))~~ (28) "Psychiatrist" means a person having a license as a
23 physician and surgeon in this state who has in addition completed three
24 years of graduate training in psychiatry in a program approved by the
25 American medical association or the American osteopathic association
26 and is certified or eligible to be certified by the American board of
27 psychiatry and neurology;

28 ~~((+26+))~~ (29) "Psychologist" means a person who has been licensed
29 as a psychologist pursuant to chapter 18.83 RCW;

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

36 ~~((+28+))~~ (31) "Release" means legal termination of the commitment
37 under the provisions of this chapter;

38 ~~((+29+))~~ (32) "Resource management services" has the meaning given
39 in chapter 71.24 RCW;

1 (~~(30)~~) (33) "Secretary" means the secretary of the department of
2 social and health services, or his or her designee;

3 (~~(31)~~) (34) "Social worker" means a person with a master's or
4 further advanced degree from an accredited school of social work or a
5 degree deemed equivalent under rules adopted by the secretary;

6 (~~(32)~~) (35) "Subject of the order" means a person who has been
7 ordered by the court to obtain outpatient treatment under an order of
8 outpatient commitment;

9 (36) "Subject of the petition" means a person who, under a petition
10 filed with the court, is alleged to meet the criteria for outpatient
11 commitment;

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

15 NEW SECTION. **Sec. 2.** (1) A person may be ordered to obtain
16 involuntary outpatient treatment under this chapter if the court finds
17 that the person:

18 (a) Has had more than two involuntary inpatient or outpatient
19 detentions within the last twenty-four months;

20 (b) Is suffering from a severe mental disorder;

21 (c) Is capable of surviving safely in the community with
22 supervision;

23 (d) Based on treatment history and current behavior, is now in need
24 of treatment in order to prevent a relapse or deterioration that would
25 predictably result in the person becoming imminently dangerous or in
26 need of hospitalization;

27 (e) Is unable to make an informed decision to seek or comply with
28 recommended treatment; and

29 (f) Has a reasonable prospect that outpatient treatment will be
30 beneficial.

31 (2) A person may file a petition, executed subject to the penalties
32 of perjury, with the court alleging that another person meets the
33 criteria for involuntary outpatient treatment. The petition must
34 state:

35 (a) Each of the criteria under subsection (1) (a) through (f) of
36 this section for outpatient commitment;

37 (b) The petitioner's good faith belief that the subject of the
38 petition meets each of the criteria of this section;

1 (c) Facts that support the petitioner's good faith belief that the
2 subject of the petition meets each of the criteria of this section, but
3 the hearing on the petition need not be limited to the stated facts;
4 and

5 (d) That the subject of the petition is present within the county
6 where the petition is filed.

7 (3) The petitioner may request the court to subpoena witnesses, if
8 necessary, who are needed to support the petition.

9 (4) The petition may be accompanied by a statement of a
10 psychiatrist, or of a physician and a mental health professional, who
11 has examined the subject of the petition before the submission of the
12 petition. If the subject of the petition has refused to submit to
13 examination by a psychiatrist, physician, or mental health
14 professional, the fact of the refusal must be alleged in the petition.

15 (5) At a probable cause hearing conducted under RCW 71.05.200,
16 71.05.240, or 71.05.310, the court may order outpatient commitment as
17 an option for treatment without the necessity of receiving a petition
18 for outpatient commitment. However, the criteria for outpatient
19 commitment must be met and supported by the evidence.

20 NEW SECTION. **Sec. 3.** (1) The court shall hold a hearing on a
21 petition filed under section 2 of this act as soon as possible, but
22 within six calendar days after filing of the petition.

23 (2) Notice of the hearing must be delivered personally or mailed by
24 certified or registered mail, return receipt requested, deliverable to
25 addressee only, to the subject of the petition, and those interested
26 parties identified by the petitioner, if any. All reasonable efforts
27 must be used to notify the subject of the petition of the hearing. The
28 subject and necessary witnesses must be notified as soon as possible,
29 but in all cases at least two court days before the hearing. The
30 petitioner shall certify that the notices have been mailed and to whom,
31 but proof of receipt of the notices is not required. Notice must also
32 be served on any other person that the court designates.

33 (3) The notice must include the following:

34 (a) The date, time, and place of hearing, a clear statement of the
35 purpose of the hearing and possible consequences to the subject, and a
36 statement of the legal standard upon which outpatient commitment is
37 authorized;

38 (b) A copy of the petition; and

1 (c) Notice that the subject of the petition is entitled to be
2 represented by an attorney and that the court will appoint a public
3 defender or other attorney for the subject if the subject desires one
4 and is indigent.

5 (4) The court may continue the hearing for failure to timely notify
6 the subject of the petition or those interested parties whom the
7 petitioner designates should receive notice.

8 (5) The time and form of the procedure incident to hearing the
9 issues in the petition must be provided by court rule and be consistent
10 with this section.

11 (6) The hearing may be held at a convenient place within the
12 circuit. The subject of the petition, an interested person, or the
13 court upon its own motion may request a hearing in another court
14 because of inconvenience to the parties, witnesses, or the court, or
15 because of the subject's physical or mental condition.

16 (7) The hearing must be closed to the public, unless the subject of
17 the petition requests otherwise.

18 (8) The subject of the petition shall be present at the hearing.
19 However, if the subject has been notified of the petition and does not
20 appear at the hearing, the court, in its discretion, may go forward
21 with the hearing.

22 (9) The subject of the petition may be represented by an attorney.
23 If the subject desires an attorney and is indigent, or if the court
24 determines that the legal or factual issues raised are of such
25 complexity that the assistance of an attorney is necessary for an
26 adequate presentation of the merits or that the subject of the petition
27 is unable to speak for the subject's self, the court shall order the
28 appointment of a public defender or other attorney to represent the
29 subject and continue the hearing for not more than five days.

30 (10) A subject of the petition may not be ordered to outpatient
31 commitment unless at least one psychiatrist, or a licensed physician
32 and a mental health professional, states the full condition of the
33 subject of the petition and the facts that support the allegation that
34 the subject meets all the criteria for outpatient commitment, the
35 recommended outpatient treatment, and the rationale for the recommended
36 outpatient treatment.

37 (11) If the subject of the petition has refused to be examined by
38 a licensed psychiatrist, the court may request the subject to consent
39 to examination by a psychiatrist or agency appointed by the court. If

1 the subject of the petition does not consent and the court finds
2 sufficient evidence to believe that the allegations in the petition are
3 true, the court may order the commitment of the subject to a
4 psychiatric facility for examination. The commitment may not be for
5 more than seventy-two hours. The examining psychiatrist shall submit
6 the findings and recommendations to the court.

7 (12) The subject of the petition may secure one or more psychiatric
8 examinations and present the findings as evidence at the hearing.

9 NEW SECTION. **Sec. 4.** (1) If, after hearing all relevant evidence,
10 including the results of an examination ordered by the court, if any,
11 the court finds that the subject of the petition filed under section 2
12 of this act does not meet the criteria for outpatient commitment, the
13 court shall dismiss the petition.

14 (2) If, after hearing all relevant evidence, including the results
15 of an examination ordered by the court, if any, the court finds by
16 clear and convincing evidence that the subject of the petition meets
17 the criteria for outpatient commitment, the court shall order the
18 subject to outpatient commitment and treatment for a period of not more
19 than twelve months.

20 NEW SECTION. **Sec. 5.** (1) The court shall state the beginning and
21 ending dates of the period of commitment, which may not exceed twelve
22 months, in an order made under section 4 of this act.

23 (2) The order must also state who should receive notice of intent
24 to terminate the order of outpatient commitment early, in the event
25 that the outpatient treatment psychiatrist or agency determines, before
26 the end of the court-ordered period of treatment, that the order of
27 outpatient commitment should be terminated early.

28 (3) The court shall also designate on the order the outpatient
29 treatment psychiatrist or agency who is to be responsible for the
30 management and supervision of the subject's outpatient treatment, or
31 shall designate the regional support network, who in turn shall
32 designate the agency or psychiatrist. However, the psychiatrist or
33 agency must agree to the designation.

34 (4) The court shall order the subject to obtain outpatient
35 treatment under the treatment plan. The order shall require that the
36 subject cooperate with the treatment provider and comply with the
37 course of treatment.

1 (5) The order must state that if the subject of the order does not
2 comply with the subject's treatment plan and deterioration is evident,
3 the supervising psychiatrist or agency shall recommend to the
4 psychiatric review board, facilitated return to inpatient treatment.
5 The psychiatric review board shall approve or disapprove the
6 recommendation within seventy-two hours of receipt of the
7 recommendation.

8 NEW SECTION. **Sec. 6.** The psychiatric review board may require
9 return of the participant in an outpatient treatment program under
10 sections 2 through 5 of this act to inpatient treatment if the
11 participant does not comply with the treatment plan, and deterioration
12 is evident, and may authorize peace officers to facilitate the return
13 if necessary. In the event the psychiatric review board requires the
14 participant to return to inpatient treatment, it shall notify the court
15 within twenty-four hours of the person being taken into custody.

16 NEW SECTION. **Sec. 7.** The regional support network shall assure
17 that resources are available to cover costs related to outpatient
18 commitment for persons ordered to outpatient commitment.

19 NEW SECTION. **Sec. 8.** A person adversely affected or aggrieved by
20 an order of outpatient commitment under sections 2 through 6 of this
21 act is entitled to judicial review.

22 NEW SECTION. **Sec. 9.** An outpatient commitment order issued under
23 section 4 of this act is automatically and fully terminated at the end
24 of the court-ordered period of outpatient commitment, a period of not
25 more than twelve months, unless a new court order has been obtained as
26 provided in sections 2 through 6 of this act.

27 NEW SECTION. **Sec. 10.** (1) A person may petition the court for the
28 early termination of an order of outpatient commitment issued under
29 sections 2 through 6 of this act during the period of outpatient
30 treatment if done more than sixty days after the most recent hearing
31 involving the subject of the order. The petition must be filed, notice
32 given, hearing held, and order made in the same manner as provided for
33 the original petition alleging that the subject of the order met the
34 criteria for outpatient commitment.

1 (2) The treating psychiatrist may commence the early termination
2 procedure for a subject of the order if the treating psychiatrist finds
3 that the subject no longer meets the criteria for outpatient
4 commitment.

5 (3) To commence the early termination procedure, the treating
6 psychiatrist shall send to the clerk of the court that issued the order
7 for outpatient commitment notification that, in the psychiatrist's
8 opinion, the order should be terminated before the end of the period
9 specified in the court order.

10 (4) The clerk of the court shall, upon receipt of a notification
11 under subsection (3) of this section, prepare and mail, to the persons
12 whom the court order specified are entitled to notice, a notice of
13 intent of early termination of the order. The notice of early
14 termination must be mailed at least five days before the intended date
15 of termination.

16 (5) If an objection is not filed within five days of the mailing of
17 notice, the court shall enter an order of termination.

18 NEW SECTION. **Sec. 11.** A person who has received a notice of
19 intent to terminate an order of outpatient commitment early may file an
20 objection with the court. Upon receipt of an objection, the court
21 shall hold a hearing on the termination. The hearing must be conducted
22 as provided in section 3 of this act. If the court finds by clear and
23 convincing evidence that the subject of the order continues to meet the
24 criteria for outpatient commitment, the court shall order the subject
25 to continue the outpatient treatment for the unexpired period of its
26 earlier order. If the court finds that the subject of the order does
27 not meet the criteria for outpatient commitment, the court shall
28 dismiss the objection and terminate the order early.

29 NEW SECTION. **Sec. 12.** Before the expiration of the period of
30 outpatient commitment ordered by the court, a person, including the
31 treating psychiatrist, may file a petition with the court for an order
32 of continued outpatient commitment. The petition must be filed and
33 notice provided in the same manner as under sections 2 and 3 of this
34 act. The court shall hold a hearing on the petition and make its
35 decision in the same manner as provided under section 3 of this act.
36 The court may order the continued outpatient commitment for not more

1 than twelve months after the date of the hearing. This section is in
2 addition to the provisions on the objection to termination.

3 NEW SECTION. **Sec. 13.** (1) Each regional support network shall
4 have its own psychiatric review board. The regional support network
5 shall appoint the members of the psychiatric review board, for one-year
6 terms, and temporary members as described in subsection (2) of this
7 section. The nominees must have appropriate credentials, licenses, and
8 experience relevant to making decisions under this chapter.

9 (2) The psychiatric review board shall be composed of: (a) Five to
10 seven regular members who must include:

11 (i) A duly licensed psychiatrist or physician;

12 (ii) A duly licensed mental health professional;

13 (iii) A duly licensed attorney;

14 (iv) Two lay persons who are active in mental health advocacy
15 within their counties of residence;

16 (v) A consumer who has received services in the county of the
17 consumer's residence within the last five years; and

18 (b) Temporary members required by the circumstances on an as-needed
19 basis.

20 (3) A regional support network shall formulate its own protocols
21 for nomination of candidates, screening of candidates, appointment,
22 filling of vacancies, meetings, appointment of a chair, and procedures
23 of the psychiatric review board.

24 (4) The psychiatric review board shall monitor sections 2 through
25 12 of this act for procedural and substantive compliance. The
26 psychiatric review board shall make determinations on such issues as
27 are properly brought before it. The psychiatric review board shall
28 report to the court, and other agencies, as required. The regional
29 support networks shall formulate the policies, procedures,
30 jurisdiction, reporting requirements, and other operating procedures of
31 the psychiatric review board.

32 NEW SECTION. **Sec. 14.** Sections 2 through 13 of this act are each
33 added to chapter 71.05 RCW.

--- END ---