
SECOND SUBSTITUTE HOUSE BILL 3076

State of Washington

61st Legislature

2010 Regular Session

By House Ways & Means (originally sponsored by Representatives Dickerson and Kenney; by request of Governor Gregoire)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to evaluations of persons under the involuntary
2 treatment act; amending RCW 71.05.150, 71.05.240, and 71.05.310;
3 reenacting and amending RCW 71.05.020; creating new sections; and
4 providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) The Washington institute for public
7 policy shall, in collaboration with the department of social and health
8 services and other applicable entities, undertake a search for a
9 validated mental health assessment tool or combination of tools to be
10 used by designated mental health professionals when undertaking
11 assessments of individuals for detention, commitment, and revocation
12 under the involuntary treatment act pursuant to chapter 71.05 RCW.

13 (2) This section expires June 30, 2011.

14 **Sec. 2.** RCW 71.05.020 and 2009 c 320 s 1 and 2009 c 217 s 20 are
15 each reenacted and amended to read as follows:

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

1 (1) "Admission" or "admit" means a decision by a physician or
2 psychiatric advanced registered nurse practitioner that a person should
3 be examined or treated as a patient in a hospital;

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

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

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

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

16 (6) "Crisis stabilization unit" means a short-term facility or a
17 portion of a facility licensed by the department of health and
18 certified by the department of social and health services under RCW
19 71.24.035, such as an evaluation and treatment facility or a hospital,
20 which has been designed to assess, diagnose, and treat individuals
21 experiencing an acute crisis without the use of long-term
22 hospitalization;

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

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

29 (9) "Designated chemical dependency specialist" means a person
30 designated by the county alcoholism and other drug addiction program
31 coordinator designated under RCW 70.96A.310 to perform the commitment
32 duties described in chapters 70.96A and 70.96B RCW;

33 (10) "Designated crisis responder" means a mental health
34 professional appointed by the county or the regional support network to
35 perform the duties specified in this chapter;

36 (11) "Designated mental health professional" means a mental health
37 professional designated by the county or other authority authorized in
38 rule to perform the duties specified in this chapter;

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

3 (13) "Developmental disabilities professional" means a person who
4 has specialized training and three years of experience in directly
5 treating or working with persons with developmental disabilities and is
6 a psychiatrist, psychologist, psychiatric advanced registered nurse
7 practitioner, or social worker, and such other developmental
8 disabilities professionals as may be defined by rules adopted by the
9 secretary;

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

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

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

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

33 (18) "Habilitative services" means those services provided by
34 program personnel to assist persons in acquiring and maintaining life
35 skills and in raising their levels of physical, mental, social, and
36 vocational functioning. Habilitative services include education,
37 training for employment, and therapy. The habilitative process shall

1 be undertaken with recognition of the risk to the public safety
2 presented by the person being assisted as manifested by prior charged
3 criminal conduct;

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

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

11 (21) "Individualized service plan" means a plan prepared by a
12 developmental disabilities professional with other professionals as a
13 team, for a person with developmental disabilities, which shall state:

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

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

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

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

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

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

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

29 (22) "Information related to mental health services" means all
30 information and records compiled, obtained, or maintained in the course
31 of providing services to either voluntary or involuntary recipients of
32 services by a mental health service provider. This may include
33 documents of legal proceedings under this chapter or chapter 71.34 or
34 10.77 RCW, or somatic health care information;

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

37 (24) "Legal counsel" means attorneys and staff employed by county

1 prosecutor offices or the state attorney general acting in their
2 capacity as legal representatives of public mental health service
3 providers under RCW 71.05.130;

4 (25) "Likelihood of serious harm" means:

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

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

16 (c) The person has taken an action or engaged in behavior,
17 accompanied by signs of mental disorder that, when considered in light
18 of past behavior of the respondent, is likely to be followed in the
19 near future by an attempt to do physical harm or cause substantial
20 property destruction;

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

24 (27) "Mental health professional" means a psychiatrist,
25 psychologist, psychiatric advanced registered nurse practitioner,
26 psychiatric nurse, or social worker, and such other mental health
27 professionals as may be defined by rules adopted by the secretary
28 pursuant to the provisions of this chapter;

29 (28) "Mental health service provider" means a public or private
30 agency that provides mental health services to persons with mental
31 disorders as defined under this section and receives funding from
32 public sources. This includes, but is not limited to, hospitals
33 licensed under chapter 70.41 RCW, evaluation and treatment facilities
34 as defined in this section, community mental health service delivery
35 systems or community mental health programs as defined in RCW
36 71.24.025, facilities conducting competency evaluations and restoration
37 under chapter 10.77 RCW, and correctional facilities operated by state
38 and local governments;

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

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

11 (31) "Professional person" means a mental health professional and
12 shall also mean a physician, psychiatric advanced registered nurse
13 practitioner, registered nurse, and such others as may be defined by
14 rules adopted by the secretary pursuant to the provisions of this
15 chapter;

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

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

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

28 (35) "Public agency" means any evaluation and treatment facility or
29 institution, or hospital which is conducted for, or includes a
30 department or ward conducted for, the care and treatment of persons
31 with mental illness, if the agency is operated directly by, federal,
32 state, county, or municipal government, or a combination of such
33 governments;

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

1 (37) "Release" means legal termination of the commitment under the
2 provisions of this chapter;

3 (38) "Resource management services" has the meaning given in
4 chapter 71.24 RCW;

5 (39) "Secretary" means the secretary of the department of social
6 and health services, or his or her designee;

7 (40) "Serious violent offense" has the same meaning as provided in
8 RCW 9.94A.030;

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

12 (42) "Therapeutic court personnel" means the staff of a mental
13 health court or other therapeutic court which has jurisdiction over
14 defendants who are dually diagnosed with mental disorders, including
15 court personnel, probation officers, a court monitor, prosecuting
16 attorney, or defense counsel acting within the scope of therapeutic
17 court duties;

18 (43) "Treatment records" include registration and all other records
19 concerning persons who are receiving or who at any time have received
20 services for mental illness, which are maintained by the department, by
21 regional support networks and their staffs, and by treatment
22 facilities. Treatment records include mental health information
23 contained in a medical bill including but not limited to mental health
24 drugs, a mental health diagnosis, provider name, and dates of service
25 stemming from a medical service. Treatment records do not include
26 notes or records maintained for personal use by a person providing
27 treatment services for the department, regional support networks, or a
28 treatment facility if the notes or records are not available to others;

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

32 **Sec. 3.** RCW 71.05.150 and 2007 c 375 s 7 are each amended to read
33 as follows:

34 (1) When a designated mental health professional receives
35 information alleging that a person, as a result of a mental disorder:
36 (i) Presents a likelihood of serious harm; or (ii) is gravely disabled;
37 the designated mental health professional may, after investigation and

1 evaluation of the specific facts alleged and of the reliability and
2 credibility of any person providing information to initiate detention,
3 if satisfied that the allegations are true and that the person will not
4 voluntarily seek appropriate treatment, file a petition for initial
5 detention. Before filing the petition, the designated mental health
6 professional must personally interview the person, unless the person
7 refuses an interview, and determine whether the person will voluntarily
8 receive appropriate evaluation and treatment at an evaluation and
9 treatment facility or in a crisis stabilization unit. The designated
10 mental health professional may consider information provided by
11 families, landlords, neighbors, or others with significant contact and
12 history of involvement with the person, if the information is readily
13 and reasonably available.

14 (2)(a) An order to detain to a designated evaluation and treatment
15 facility for not more than a seventy-two-hour evaluation and treatment
16 period may be issued by a judge of the superior court upon request of
17 a designated mental health professional, whenever it appears to the
18 satisfaction of a judge of the superior court:

19 (i) That there is probable cause to support the petition; and
20 (ii) That the person has refused or failed to accept appropriate
21 evaluation and treatment voluntarily.

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

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

30 (3) The designated mental health professional shall then serve or
31 cause to be served on such person, his or her guardian, and
32 conservator, if any, a copy of the order together with a notice of
33 rights, and a petition for initial detention. After service on such
34 person the designated mental health professional shall file the return
35 of service in court and provide copies of all papers in the court file
36 to the evaluation and treatment facility and the designated attorney.
37 The designated mental health professional shall notify the court and
38 the prosecuting attorney that a probable cause hearing will be held

1 within seventy-two hours of the date and time of outpatient evaluation
2 or admission to the evaluation and treatment facility. The person
3 shall be permitted to be accompanied by one or more of his or her
4 relatives, friends, an attorney, a personal physician, or other
5 professional or religious advisor to the place of evaluation. An
6 attorney accompanying the person to the place of evaluation shall be
7 permitted to be present during the admission evaluation. Any other
8 individual accompanying the person may be present during the admission
9 evaluation. The facility may exclude the individual if his or her
10 presence would present a safety risk, delay the proceedings, or
11 otherwise interfere with the evaluation.

12 (4) The designated mental health professional may notify a peace
13 officer to take such person or cause such person to be taken into
14 custody and placed in an evaluation and treatment facility. At the
15 time such person is taken into custody there shall commence to be
16 served on such person, his or her guardian, and conservator, if any, a
17 copy of the original order together with a notice of rights and a
18 petition for initial detention.

19 **Sec. 4.** RCW 71.05.240 and 2009 c 293 s 4 are each amended to read
20 as follows:

21 (1) If a petition is filed for fourteen day involuntary treatment
22 or ninety days of less restrictive alternative treatment, the court
23 shall hold a probable cause hearing within seventy-two hours of the
24 initial detention of such person as determined in RCW 71.05.180. If
25 requested by the detained person or his or her attorney, the hearing
26 may be postponed for a period not to exceed forty-eight hours. The
27 hearing may also be continued subject to the conditions set forth in
28 RCW 71.05.210 or subject to the petitioner's showing of good cause for
29 a period not to exceed twenty-four hours. A relative of the person may
30 provide the court with pertinent information at the probable cause
31 hearing.

32 (2) The court at the time of the probable cause hearing and before
33 an order of commitment is entered shall inform the person both orally
34 and in writing that the failure to make a good faith effort to seek
35 voluntary treatment as provided in RCW 71.05.230 will result in the
36 loss of his or her firearm rights if the person is subsequently
37 detained for involuntary treatment under this section.

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

15 (4) The court shall specifically state to such person and give such
16 person notice in writing that if involuntary treatment beyond the
17 fourteen day period or beyond the ninety days of less restrictive
18 treatment is to be sought, such person will have the right to a full
19 hearing or jury trial as required by RCW 71.05.310. The court shall
20 also state to the person and provide written notice that the person is
21 barred from the possession of firearms and that the prohibition remains
22 in effect until a court restores his or her right to possess a firearm
23 under RCW 9.41.047.

24 **Sec. 5.** RCW 71.05.310 and 2005 c 504 s 709 are each amended to
25 read as follows:

26 The court shall conduct a hearing on the petition for ninety day
27 treatment within five judicial days of the first court appearance after
28 the probable cause hearing. The court may continue the hearing upon
29 the written request of the person named in the petition or the person's
30 attorney, for good cause shown, which continuance shall not exceed five
31 additional judicial days. If the person named in the petition requests
32 a jury trial, the trial shall commence within ten judicial days of the
33 first court appearance after the probable cause hearing. The burden of
34 proof shall be by clear, cogent, and convincing evidence and shall be
35 upon the petitioner. The person shall be present at such proceeding,
36 which shall in all respects accord with the constitutional guarantees

1 of due process of law and the rules of evidence pursuant to RCW
2 71.05.360 (8) and (9). A relative of the person may provide the court
3 with pertinent information at the proceeding.

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

9 NEW SECTION. **Sec. 6.** If specific funding for the purposes of this
10 act, referencing this act by bill or chapter number, is not provided by
11 June 30, 2010, in the omnibus appropriations act, this act is null and
12 void.

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