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**SUBSTITUTE HOUSE BILL 1170**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Roberts, Hope, Dickerson, Dammeier, Green, Rolfes, Haigh, Appleton, Walsh, Ormsby, Darneille, and Kenney)

READ FIRST TIME 02/08/11.

1       AN ACT Relating to triage facilities; amending RCW 71.05.153 and  
2 10.31.110; reenacting and amending RCW 71.05.020; and declaring an  
3 emergency.

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

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

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

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

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

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

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

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

6 (6) "Crisis stabilization unit" means a short-term facility or a  
7 portion of a facility licensed by the department of health and  
8 certified by the department of social and health services under RCW  
9 71.24.035, such as an evaluation and treatment facility or a hospital,  
10 which has been designed to assess, diagnose, and treat individuals  
11 experiencing an acute crisis without the use of long-term  
12 hospitalization;

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

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

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

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

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

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

31 (13) "Developmental disabilities professional" means a person who  
32 has specialized training and three years of experience in directly  
33 treating or working with persons with developmental disabilities and is  
34 a psychiatrist, psychologist, psychiatric advanced registered nurse  
35 practitioner, or social worker, and such other developmental  
36 disabilities professionals as may be defined by rules adopted by the  
37 secretary;

1 (14) "Developmental disability" means that condition defined in RCW  
2 71A.10.020(3);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (22) "Information related to mental health services" means all  
20 information and records compiled, obtained, or maintained in the course  
21 of providing services to either voluntary or involuntary recipients of  
22 services by a mental health service provider. This may include  
23 documents of legal proceedings under this chapter or chapter 71.34 or  
24 10.77 RCW, or somatic health care information;

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

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

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

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

1 physical harm will be inflicted by a person upon the property of  
2 others, as evidenced by behavior which has caused substantial loss or  
3 damage to the property of others; or

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

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

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

14 (28) "Mental health service provider" means a public or private  
15 agency that provides mental health services to persons with mental  
16 disorders as defined under this section and receives funding from  
17 public sources. This includes, but is not limited to, hospitals  
18 licensed under chapter 70.41 RCW, evaluation and treatment facilities  
19 as defined in this section, community mental health service delivery  
20 systems or community mental health programs as defined in RCW  
21 71.24.025, facilities conducting competency evaluations and restoration  
22 under chapter 10.77 RCW, and correctional facilities operated by state  
23 and local governments;

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

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

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

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

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

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

13 (35) "Public agency" means any evaluation and treatment facility or  
14 institution, or hospital which is conducted for, or includes a  
15 department or ward conducted for, the care and treatment of persons  
16 with mental illness, if the agency is operated directly by, federal,  
17 state, county, or municipal government, or a combination of such  
18 governments;

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

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

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

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

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

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

35 (42) "Therapeutic court personnel" means the staff of a mental  
36 health court or other therapeutic court which has jurisdiction over  
37 defendants who are dually diagnosed with mental disorders, including

1 court personnel, probation officers, a court monitor, prosecuting  
2 attorney, or defense counsel acting within the scope of therapeutic  
3 court duties;

4 (43) "Triage facility" means a short-term facility or a portion of  
5 a facility that operates as a nonmedical facility licensed by the  
6 department of health and certified by the department of social and  
7 health services under RCW 71.24.035, which is designed as a facility to  
8 assess and stabilize an individual or determine the need for  
9 involuntary commitment of an individual, and must meet department of  
10 health residential treatment facility standards. Facilities providing  
11 triage services as of the effective date of this section will not be  
12 required to relicense or recertify under any new regulations governing  
13 licensure or certification of triage facilities. The department of  
14 social and health services shall work with the Washington association  
15 of counties and the Washington association of sheriffs and police  
16 chiefs in creating regulations that establish standards for  
17 certification of triage facilities. These regulations must not require  
18 triage facilities to provide twenty-four hour nursing;

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

30 ((+44)) (45) "Violent act" means behavior that resulted in  
31 homicide, attempted suicide, nonfatal injuries, or substantial damage  
32 to property.

33 **Sec. 2.** RCW 71.05.153 and 2007 c 375 s 8 are each amended to read  
34 as follows:

35 (1) When a designated mental health professional receives  
36 information alleging that a person, as the result of a mental disorder,  
37 presents an imminent likelihood of serious harm, or is in imminent

1 danger because of being gravely disabled, after investigation and  
2 evaluation of the specific facts alleged and of the reliability and  
3 credibility of the person or persons providing the information if any,  
4 the designated mental health professional may take such person, or  
5 cause by oral or written order such person to be taken into emergency  
6 custody in an evaluation and treatment facility for not more than  
7 seventy-two hours as described in RCW 71.05.180.

8 (2) A peace officer may take or cause such person to be taken into  
9 custody and immediately delivered to a triage facility, crisis  
10 stabilization unit, (~~an~~) evaluation and treatment facility, or the  
11 emergency department of a local hospital under the following  
12 circumstances:

13 (a) Pursuant to subsection (1) of this section; or

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

18 (3) Persons delivered to a triage facility, crisis stabilization  
19 unit, evaluation and treatment facility, or the emergency department of  
20 a local hospital by peace officers pursuant to subsection (2) of this  
21 section may be held by the facility for a period of up to twelve hours:  
22 PROVIDED, That they are examined by a mental health professional within  
23 three hours of their arrival. Within twelve hours of their arrival,  
24 the designated mental health professional must determine whether the  
25 individual meets detention criteria. If the individual is detained,  
26 the designated mental health professional shall file a petition for  
27 detention or a supplemental petition as appropriate and commence  
28 service on the designated attorney for the detained person.

29 **Sec. 3.** RCW 10.31.110 and 2007 c 375 s 2 are each amended to read  
30 as follows:

31 (1) When a police officer has reasonable cause to believe that the  
32 individual has committed acts constituting a nonfelony crime that is  
33 not a serious offense as identified in RCW 10.77.092 and the individual  
34 is known by history or consultation with the regional support network  
35 to suffer from a mental disorder, the arresting officer may:

36 (a) Take the individual to a crisis stabilization unit as defined  
37 in RCW 71.05.020(6). Individuals delivered to a crisis stabilization



1 unit pursuant to this section may be held by the facility for a period  
2 of up to twelve hours: PROVIDED, That they are examined by a mental  
3 health professional within three hours of their arrival;

4 (b) Take the individual to a triage facility as defined in RCW  
5 71.05.020. An individual delivered to a triage facility may be held up  
6 to a period of twelve hours: PROVIDED, That he or she is examined by  
7 a mental health professional within three hours of his or her arrival;

8 (c) Refer the individual to a mental health professional for  
9 evaluation for initial detention and proceeding under chapter 71.05  
10 RCW; or

11 ((+e)) (d) Release the individual upon agreement to voluntary  
12 participation in outpatient treatment.

13 (2) In deciding whether to refer the individual to treatment under  
14 this section, the police officer shall be guided by standards mutually  
15 agreed upon with the prosecuting authority, which address, at a  
16 minimum, the length, seriousness, and recency of the known criminal  
17 history of the individual, the mental health history of the individual,  
18 where available, and the circumstances surrounding the commission of  
19 the alleged offense.

20 (3) Any agreement to participate in treatment shall not require  
21 individuals to stipulate to any of the alleged facts regarding the  
22 criminal activity as a prerequisite to participation in a mental health  
23 treatment alternative. The agreement is inadmissible in any criminal  
24 or civil proceeding. The agreement does not create immunity from  
25 prosecution for the alleged criminal activity.

26 (4) If an individual violates such agreement and the mental health  
27 treatment alternative is no longer appropriate:

28 (a) The mental health provider shall inform the referring law  
29 enforcement agency of the violation; and

30 (b) The original charges may be filed or referred to the  
31 prosecutor, as appropriate, and the matter may proceed accordingly.

32 (5) The police officer is immune from liability for any good faith  
33 conduct under this section.

34 NEW SECTION. Sec. 4. This act is necessary for the immediate  
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

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