
SENATE BILL 5768

State of Washington

63rd Legislature

2013 Regular Session

By Senators Keiser and Darneille

Read first time 02/14/13. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to outpatient commitment; reenacting and amending
2 RCW 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 2011 c 148 s 1 and 2011 c 89 s 14 are
5 each reenacted and amended to read as follows:

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

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

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

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

18 (4) "Commitment" means the determination by a court that a person

1 should be detained for a period of either evaluation or treatment, or
2 both, in an inpatient or a less restrictive setting;

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

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

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

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

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

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

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

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

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

37 (14) "Developmental disability" means that condition defined in RCW
38 71A.10.020(~~(+3)~~) (4);

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

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

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

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

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

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

37 (21) "Individualized service plan" means a plan prepared by a

1 developmental disabilities professional with other professionals as a
2 team, for a person with developmental disabilities, which shall state:

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

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

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

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

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

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

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

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

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

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

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

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

1 others, as evidenced by behavior which has caused substantial loss or
2 damage to the property of others; or

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

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

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

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

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

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

33 (31) "Professional person" means a mental health professional and
34 shall also mean a physician, psychiatric advanced registered nurse
35 practitioner, registered nurse, and such others as may be defined by
36 rules adopted by the secretary pursuant to the provisions of this
37 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 a social work educational program accredited and
34 approved as provided in RCW 18.320.010;

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 licensed by the department of health and certified by the
6 department of social and health services under RCW 71.24.035, which is
7 designed as a facility to assess and stabilize an individual or
8 determine the need for involuntary commitment of an individual, and
9 must meet department of health residential treatment facility
10 standards. A triage facility may be structured as a voluntary or
11 involuntary placement facility;

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

23 (45) "Violent act" means behavior that resulted in homicide,
24 attempted suicide, nonfatal injuries, or substantial damage to
25 property.

26 (46) "Outpatient commitment" means court-ordered outpatient
27 treatment for a person who:

28 (a) Has had more than two involuntary inpatient or outpatient
29 commitments within the last twenty-four months;

30 (b) Is suffering from a mental disorder;

31 (c) Is capable of surviving safely in the community with
32 supervision;

33 (d) In view of the person's treatment history or current behavior,
34 the person is unlikely to voluntarily participate in outpatient
35 treatment without an order for outpatient commitment; and

36 (e) Outpatient treatment that would be provided under an outpatient
37 commitment order is necessary to prevent a relapse, decompensation, or

1 deterioration that is likely to result in the person presenting a
2 likelihood of serious harm or the person becoming gravely disabled
3 within a reasonably short period of time.

4 (47) "Outpatient treatment" includes: Medication; individual or
5 group therapy; day or partial day programming activities; services and
6 training, including educational and vocational activities; supervision
7 of living arrangements; and other services prescribed to either
8 alleviate the person's disorder or disability, to maintain semi-
9 independent functioning, or to prevent further deterioration that may
10 reasonably be predicted to result in the need for hospitalization;

11 (48) "Outpatient treatment psychiatrist or agency," "supervising
12 psychiatrist, agency, or provider," or similar terms mean the
13 psychiatrist or agency who is responsible for the management and
14 supervision of a person's outpatient treatment under order of the
15 court;

16 (49) "Subject of the order" means a person who has been ordered by
17 the court to obtain outpatient treatment under an order of outpatient
18 commitment;

19 (50) "Subject of the petition" means a person who, under a petition
20 filed with the court, is alleged to meet the criteria for outpatient
21 commitment.

22 NEW SECTION. Sec. 2. (1) A person may be ordered to obtain
23 involuntary outpatient treatment under this chapter if the court finds
24 that the person:

25 (a) Has had more than two involuntary inpatient or outpatient
26 commitments within the last twenty-four months;

27 (b) Is suffering from a mental disorder;

28 (c) Is capable of surviving safely in the community with
29 supervision;

30 (d) In view of the person's treatment history or current behavior,
31 the person is unlikely to voluntarily participate in outpatient
32 treatment without an order for outpatient commitment; and

33 (e) Outpatient treatment that would be provided under an outpatient
34 commitment order is necessary to prevent a relapse, decompensation, or
35 deterioration that is likely to result in the person presenting a
36 likelihood of serious harm or the person becoming gravely disabled
37 within a reasonably short period of time.

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

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

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

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

13 (d) That the subject of the petition is present within the county
14 where the petition is filed.

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

17 (4) The petition may be accompanied by a statement of a
18 psychiatrist, or of a physician and a mental health professional, who
19 has examined the subject of the petition before the submission of the
20 petition. If the subject of the petition has refused to submit to
21 examination by a psychiatrist, physician, or mental health
22 professional, the fact of the refusal must be alleged in the petition.

23 (5) At a probable cause hearing conducted under RCW 71.05.240 or
24 71.05.310, the court may order outpatient commitment as an option for
25 treatment without the necessity of receiving a petition for outpatient
26 commitment. However, the criteria for outpatient commitment must be
27 met and supported by the evidence.

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

31 (2) Notice of the hearing must be delivered personally or mailed by
32 certified or registered mail, return receipt requested, deliverable to
33 addressee only, to the subject of the petition, and those interested
34 parties identified by the petitioner, if any. All reasonable efforts
35 must be used to notify the subject of the petition of the hearing. The
36 subject and necessary witnesses must be notified as soon as possible,
37 but in all cases at least two court days before the hearing. The

1 petitioner shall certify that the notices have been mailed and to whom,
2 but proof of receipt of the notices is not required. Notice must also
3 be served on any other person that the court designates.

4 (3) The notice must include the following:

5 (a) The date, time, and place of hearing, a clear statement of the
6 purpose of the hearing and possible consequences to the subject, and a
7 statement of the legal standard upon which outpatient commitment is
8 authorized;

9 (b) A copy of the petition; and

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

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

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

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

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

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

31 (9) The subject of the petition may be represented by an attorney.
32 If the subject desires an attorney and is indigent, or if the court
33 determines that the legal or factual issues raised are of such
34 complexity that the assistance of an attorney is necessary for an
35 adequate presentation of the merits or that the subject of the petition
36 is unable to speak for the subject's self, the court shall order the
37 appointment of a public defender or other attorney to represent the
38 subject and continue the hearing for not more than five days.

1 (10) A subject of the petition may not be ordered to outpatient
2 commitment unless at least one psychiatrist, or a licensed physician
3 and a mental health professional, states the full condition of the
4 subject of the petition and the facts that support the allegation that
5 the subject meets all the criteria for outpatient commitment, the
6 recommended outpatient treatment, and the rationale for the recommended
7 outpatient treatment.

8 (11) If the subject of the petition has refused to be examined by
9 a licensed psychiatrist, the court may request the subject to consent
10 to examination by a psychiatrist or agency appointed by the court. If
11 the subject of the petition does not consent and the court finds
12 sufficient evidence to believe that the allegations in the petition are
13 true, the court may order the commitment of the subject to a
14 psychiatric facility for examination. The commitment may not be for
15 more than seventy-two hours. The examining psychiatrist shall submit
16 the findings and recommendations to the court.

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

19 NEW SECTION. **Sec. 4.** (1) If, after hearing all relevant evidence,
20 including the results of an examination ordered by the court, if any,
21 the court finds that the subject of the petition filed under section 3
22 of this act does not meet the criteria for outpatient commitment, the
23 court shall dismiss the petition.

24 (2) If, after hearing all relevant evidence, including the results
25 of an examination ordered by the court, if any, the court finds by
26 clear and convincing evidence that the subject of the petition meets
27 the criteria for outpatient commitment, the court shall order the
28 subject to outpatient commitment and treatment for a period of not more
29 than twelve months.

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

33 (2) The order must also state who should receive notice of intent
34 to terminate the order of outpatient commitment early, in the event
35 that the outpatient treatment psychiatrist or agency determines, before

1 the end of the court-ordered period of treatment, that the order of
2 outpatient commitment should be terminated early.

3 (3) The court shall also designate on the order the outpatient
4 treatment psychiatrist or agency who is to be responsible for the
5 management and supervision of the subject's outpatient treatment, or
6 shall designate the regional support network, who in turn shall
7 designate the agency or psychiatrist. However, the psychiatrist or
8 agency must agree to the designation.

9 (4) The court shall order the subject to obtain outpatient
10 treatment under the treatment plan. The order shall require that the
11 subject cooperate with the treatment provider and comply with the
12 course of treatment.

13 NEW SECTION. **Sec. 6.** The regional support network shall assure
14 that resources are available to cover costs related to outpatient
15 commitment for persons ordered to outpatient commitment.

16 NEW SECTION. **Sec. 7.** A person adversely affected or aggrieved by
17 an order of outpatient commitment under sections 3 through 6 of this
18 act is entitled to judicial review.

19 NEW SECTION. **Sec. 8.** An outpatient commitment order issued under
20 section 5 of this act is automatically and fully terminated at the end
21 of the court-ordered period of outpatient commitment, a period of not
22 more than twelve months, unless a new court order has been obtained as
23 provided in sections 3 through 6 of this act.

24 NEW SECTION. **Sec. 9.** (1) A person may petition the court for the
25 early termination of an order of outpatient commitment issued under
26 sections 3 through 6 of this act during the period of outpatient
27 treatment if done more than sixty days after the most recent hearing
28 involving the subject of the order. The petition must be filed, notice
29 given, hearing held, and order made in the same manner as provided for
30 the original petition alleging that the subject of the order met the
31 criteria for outpatient commitment.

32 (2) The treating psychiatrist may commence the early termination
33 procedure for a subject of the order if the treating psychiatrist finds

1 that the subject no longer meets the criteria for outpatient
2 commitment.

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

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

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

16 NEW SECTION. **Sec. 10.** A person who has received a notice of
17 intent to terminate an order of outpatient commitment early may file an
18 objection with the court. Upon receipt of an objection, the court
19 shall hold a hearing on the termination. The hearing must be conducted
20 as provided in section 4 of this act. If the court finds by clear and
21 convincing evidence that the subject of the order continues to meet the
22 criteria for outpatient commitment, the court shall order the subject
23 to continue the outpatient treatment for the unexpired period of its
24 earlier order. If the court finds that the subject of the order does
25 not meet the criteria for outpatient commitment, the court shall
26 dismiss the objection and terminate the order early.

27 NEW SECTION. **Sec. 11.** Before the expiration of the period of
28 outpatient commitment ordered by the court, a person, including the
29 treating psychiatrist, may file a petition with the court for an order
30 of continued outpatient commitment. The petition must be filed and
31 notice provided in the same manner as under sections 3 and 4 of this
32 act. The court shall hold a hearing on the petition and make its
33 decision in the same manner as provided under section 4 of this act.
34 The court may order the continued outpatient commitment for not more
35 than twelve months after the date of the hearing. This section is in
36 addition to the provisions on the objection to termination.

1 NEW SECTION. **Sec. 12.** Sections 2 through 12 of this act are each
2 added to chapter 71.05 RCW.

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