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**SENATE BILL 5649**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Darneille, Miloscia, Fraser, Keiser, Parlette, Benton, McCoy, and Dammeier

AN ACT Relating to involuntary outpatient mental health treatment; amending RCW 71.05.150, 71.05.156, 71.05.212, 71.05.230, 71.05.240, 71.05.245, 71.05.280, and 71.05.320; reenacting and amending RCW 71.05.020 and 71.05.020; providing an effective date; and providing an expiration date.

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

**Sec.**  RCW 71.05.020 and 2011 c 148 s 1 and 2011 c 89 s 14 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Developmental disability" means that condition defined in RCW 71A.10.020((~~(3)~~))(5);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) "Likelihood of serious harm" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(41) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

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

(43) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

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

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

(46) "In need of assisted outpatient treatment" means that a person, as a result of a mental disorder: (a) Has been committed by a court to detention for involuntary mental health treatment at least twice during the preceding thirty-six months, or, if the person is currently committed for involuntary mental health treatment, the person has been committed to detention for involuntary mental health treatment at least once during the thirty-six months preceding the date of initial detention of the current commitment cycle; (b) in view of the person's treatment history or current behavior, the person is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive treatment; and (c) outpatient treatment that would be provided under a less restrictive treatment order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time. For purposes of (a) of this subsection, time spent in a mental health facility or in confinement as a result of a criminal conviction is excluded from the thirty-six month calculation.

**Sec.**  RCW 71.05.020 and 2014 c 225 s 79 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

(10) "Designated crisis responder" means a mental health professional appointed by the county or the behavioral health organization to perform the duties specified in this chapter;

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

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

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

(14) "Developmental disability" means that condition defined in RCW 71A.10.020((~~(4)~~))(5);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(25) "Likelihood of serious harm" means:

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

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

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

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

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

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

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

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

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

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

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

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

(36) "Registration records" include all the records of the department, behavioral health organizations, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

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

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

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

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

(41) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

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

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

(44) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

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

(46) "In need of assisted outpatient treatment" means that a person, as a result of a mental disorder: (a) Has been committed by a court to detention for involuntary mental health treatment at least twice during the preceding thirty-six months, or, if the person is currently committed for involuntary mental health treatment, the person has been committed to detention for involuntary mental health treatment at least once during the thirty-six months preceding the date of initial detention of the current commitment cycle; (b) in view of the person's treatment history or current behavior, the person is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive treatment; and (c) outpatient treatment that would be provided under a less restrictive treatment order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time. For purposes of (a) of this subsection, time spent in a mental health facility or in confinement as a result of a criminal conviction is excluded from the thirty-six month calculation.

**Sec.**  RCW 71.05.150 and 2011 c 148 s 5 are each amended to read as follows:

(1)(a) When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; ((~~or~~)) (ii) is gravely disabled; or (iii) is in need of assisted outpatient treatment; the designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or outpatient evaluation, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention or outpatient evaluation. If the petition is filed solely on the grounds that the person is in need of assisted outpatient treatment, the petition may only be for outpatient evaluation.

(b) Before filing the petition, the designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, or triage facility.

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

(i) That there is probable cause to support the petition; and

(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

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

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

(3) The designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention or outpatient evaluation. After service on such person the designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

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

**Sec.**  RCW 71.05.156 and 2013 c 334 s 2 are each amended to read as follows:

A designated mental health professional who conducts an evaluation for imminent likelihood of serious harm or imminent danger because of being gravely disabled under RCW 71.05.153 must also evaluate the person under RCW 71.05.150 for likelihood of serious harm or grave disability that does not meet the imminent standard for emergency detention, and determine whether the person is in need of assisted outpatient treatment.

**Sec.**  RCW 71.05.212 and 2010 c 280 s 2 are each amended to read as follows:

(1) Whenever a designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:

(a) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW;

(b) Historical behavior, including history of one or more violent acts;

(c) Prior determinations of incompetency or insanity under chapter 10.77 RCW; and

(d) Prior commitments under this chapter.

(2) Credible witnesses may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person. If the designated mental health professional relies upon information from a credible witness in reaching his or her decision to detain the individual, then he or she must provide contact information for any such witness to the prosecutor. The designated mental health professional or prosecutor shall provide notice of the date, time, and location of the probable cause hearing to such a witness.

(3) Symptoms and behavior of the respondent which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm, or a finding that the person is in need of assisted outpatient treatment, when:

(a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;

(b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and

(c) Without treatment, the continued deterioration of the respondent is probable.

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

**Sec.**  RCW 71.05.230 and 2011 c 343 s 9 are each amended to read as follows:

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

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and ((~~either~~)) results in a likelihood of serious harm, ((~~or~~)) results in the ((~~detained~~)) person being gravely disabled, or results in the person being in need of assisted outpatient treatment, and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by:

(a) Two physicians;

(b) One physician and a mental health professional;

(c) Two psychiatric advanced registered nurse practitioners;

(d) One psychiatric advanced registered nurse practitioner and a mental health professional; or

(e) A physician and a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, ((~~or~~)) is gravely disabled, or is in need of assisted outpatient treatment, and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

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

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

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

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

(3) At the conclusion of the probable cause hearing((~~, if the court finds by a preponderance of the evidence that~~)):

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

(b) If the court finds by a preponderance of the evidence that such person, as the result of a mental disorder, is in need of assisted outpatient treatment, and that the person does not present a likelihood of serious harm or grave disability, the court shall order an appropriate less restrictive course of treatment not to exceed ninety days, and may not order inpatient treatment.

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

**Sec.**  RCW 71.05.245 and 2010 c 280 s 3 are each amended to read as follows:

(1) In making a determination of whether a person is gravely disabled ((~~or~~)), presents a likelihood of serious harm, or is in need of assisted outpatient treatment in a hearing conducted under RCW 71.05.240 or 71.05.320, the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm, or a finding that the person is in need of assisted outpatient treatment, when: (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (b) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and (c) without treatment, the continued deterioration of the respondent is probable.

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

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

**Sec.**  RCW 71.05.280 and 2013 c 289 s 4 are each amended to read as follows:

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

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

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

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.086(4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts.

(a) In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime;

(b) For any person subject to commitment under this subsection where the charge underlying the finding of incompetence is for a felony classified as violent under RCW 9.94A.030, the court shall determine whether the acts the person committed constitute a violent offense under RCW 9.94A.030; or

(4) Such person is gravely disabled; or

(5) Such person is in need of assisted outpatient treatment.

**Sec.**  RCW 71.05.320 and 2013 c 289 s 5 are each amended to read as follows:

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

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment. If the grounds set forth in RCW 71.05.280(5) provide the only basis for commitment, the court must order an appropriate less restrictive course of treatment not to exceed ninety days, and may not order inpatient treatment.

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

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

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

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled; or

(e) Is in need of assisted outpatient treatment.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

(4) ((~~For a person committed under subsection (2) of this section who has been remanded to a period of less restrictive treatment, in addition to the grounds specified in subsection (3) of this section, the designated mental health professional may file a new petition for continued less restrictive treatment if:~~

~~(a) The person was previously committed by a court to detention for involuntary mental health treatment during the thirty-six months that preceded the person's initial detention date during the current involuntary commitment cycle, excluding any time spent in a mental health facility or in confinement as a result of a criminal conviction;~~

~~(b) In view of the person's treatment history or current behavior, the person is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive treatment; and~~

~~(c) Outpatient treatment that would be provided under a less restrictive treatment order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time.~~

~~(5)~~)) A new petition for involuntary treatment filed under subsection (3) ((~~or (4)~~)) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

((~~(6)~~))(5) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. If the court's order is based solely on the grounds identified in subsection (3)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days, and may not enter an order for inpatient treatment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. However, a commitment solely on the grounds identified in subsection (3)(e) of this section is not permissible under subsection ((~~(4)~~))(3) of this section if: (i) Thirty-six months have passed since the last date of discharge from detention for inpatient treatment that preceded the current less restrictive alternative order, ((~~nor shall a commitment under subsection (4) of this section be permissible if~~))or (ii) the likelihood of serious harm ((~~in subsection (4)(c) of this section~~))as described in RCW 71.05.020(46)(c) is based solely on harm to the property of others.

((~~(7)~~))(6) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length.

NEW SECTION. **Sec.**  Section 1 of this act expires April 1, 2016.

NEW SECTION. **Sec.**  Section 2 of this act takes effect April 1, 2016.

**--- END ---**