
HOUSE BILL 1287

State of Washington

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2015 Regular Session

By Representatives Orwall and Jinkins

Read first time 01/16/15. Referred to Committee on Judiciary.

1 AN ACT Relating to less restrictive alternative orders under the
2 involuntary treatment act; and amending RCW 71.05.320 and 71.05.340.

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

4 **Sec. 1.** RCW 71.05.320 and 2013 c 289 s 5 are each amended to
5 read as follows:

6 (1) If the court or jury finds that grounds set forth in RCW
7 71.05.280 have been proven and that the best interests of the person
8 or others will not be served by a less restrictive treatment which is
9 an alternative to detention, the court shall remand him or her to the
10 custody of the department or to a facility certified for ninety day
11 treatment by the department for a further period of intensive
12 treatment not to exceed ninety days from the date of judgment. If the
13 grounds set forth in RCW 71.05.280(3) are the basis of commitment,
14 then the period of treatment may be up to but not exceed one hundred
15 eighty days from the date of judgment in a facility certified for one
16 hundred eighty day treatment by the department.

17 (2) If the court or jury finds that grounds set forth in RCW
18 71.05.280 have been proven, but finds that treatment less restrictive
19 than detention will be in the best interest of the person or others,
20 then the court shall remand him or her to the custody of the
21 department or to a facility certified for ninety day treatment by the

1 department or to a less restrictive alternative for a further period
2 of less restrictive treatment not to exceed ninety days from the date
3 of judgment. If the grounds set forth in RCW 71.05.280(3) are the
4 basis of commitment, then the period of treatment may be up to but
5 not exceed one hundred eighty days from the date of judgment.

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

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

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

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

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

1 which may be initiated prior to or after discharge from the state
2 hospital; or

3 (d) Continues to be gravely disabled.

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

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

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

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

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

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

33 (6) The hearing shall be held as provided in RCW 71.05.310, and
34 if the court or jury finds that the grounds for additional
35 confinement as set forth in this section are present, the court may
36 order the committed person returned for an additional period of
37 treatment not to exceed one hundred eighty days from the date of
38 judgment except as provided in subsection (7) of this section. At the
39 end of the one hundred eighty day period of commitment, or one-year
40 period of commitment if subsection (7) of this section applies, the

1 committed person shall be released unless a petition for (~~another~~)
2 an additional one hundred eighty day period of continued treatment is
3 filed and heard in the same manner as provided in this section.
4 Successive one hundred eighty day commitments are permissible on the
5 same grounds and pursuant to the same procedures as the original one
6 hundred eighty day commitment. However, a commitment is not
7 permissible under subsection (4) of this section if thirty-six months
8 have passed since the last date of discharge from detention for
9 inpatient treatment that preceded the current less restrictive
10 alternative order, nor shall a commitment under subsection (4) of
11 this section be permissible if the likelihood of serious harm in
12 subsection (4)(c) of this section is based solely on harm to the
13 property of others.

14 (7) An order for less restrictive treatment entered under
15 subsection (6) of this section may be for up to one year when the
16 person's previous commitment term was for intensive inpatient
17 treatment in a state hospital.

18 (8) No person committed as provided in this section may be
19 detained unless a valid order of commitment is in effect. No order of
20 commitment can exceed one hundred eighty days in length except as
21 provided in subsection (7) of this section.

22 **Sec. 2.** RCW 71.05.340 and 2009 c 322 s 1 are each amended to
23 read as follows:

24 (1)(a) When, in the opinion of the superintendent or the
25 professional person in charge of the hospital or facility providing
26 involuntary treatment, the committed person can be appropriately
27 served by outpatient treatment prior to or at the expiration of the
28 period of commitment, then such outpatient care may be required as a
29 term of conditional release for a period which, when added to the
30 inpatient treatment period, shall not exceed the period of
31 commitment. If the hospital or facility designated to provide
32 outpatient treatment is other than the facility providing involuntary
33 treatment, the outpatient facility so designated must agree in
34 writing to assume such responsibility. A copy of the terms of
35 conditional release shall be given to the patient, the designated
36 mental health professional in the county in which the patient is to
37 receive outpatient treatment, and to the court of original
38 commitment.

1 (b) Before a person committed under grounds set forth in RCW
2 71.05.280(3) or 71.05.320(3)(c) is conditionally released under (a)
3 of this subsection, the superintendent or professional person in
4 charge of the hospital or facility providing involuntary treatment
5 shall in writing notify the prosecuting attorney of the county in
6 which the criminal charges against the committed person were
7 dismissed, of the decision to conditionally release the person.
8 Notice and a copy of the terms of conditional release shall be
9 provided at least thirty days before the person is released from
10 inpatient care. Within twenty days after receiving notice, the
11 prosecuting attorney may petition the court in the county that issued
12 the commitment order to hold a hearing to determine whether the
13 person may be conditionally released and the terms of the conditional
14 release. The prosecuting attorney shall provide a copy of the
15 petition to the superintendent or professional person in charge of
16 the hospital or facility providing involuntary treatment, the
17 attorney, if any, and guardian or conservator of the committed
18 person, and the court of original commitment. If the county in which
19 the committed person is to receive outpatient treatment is the same
20 county in which the criminal charges against the committed person
21 were dismissed, then the court shall, upon the motion of the
22 prosecuting attorney, transfer the proceeding to the court in that
23 county. The court shall conduct a hearing on the petition within ten
24 days of the filing of the petition. The committed person shall have
25 the same rights with respect to notice, hearing, and counsel as for
26 an involuntary treatment proceeding, except as set forth in this
27 subsection and except that there shall be no right to jury trial. The
28 issue to be determined at the hearing is whether or not the person
29 may be conditionally released without substantial danger to other
30 persons, or substantial likelihood of committing criminal acts
31 jeopardizing public safety or security. If the court disapproves of
32 the conditional release, it may do so only on the basis of
33 substantial evidence. Pursuant to the determination of the court upon
34 the hearing, the conditional release of the person shall be approved
35 by the court on the same or modified conditions or the person shall
36 be returned for involuntary treatment on an inpatient basis subject
37 to release at the end of the period for which he or she was
38 committed, or otherwise in accordance with the provisions of this
39 chapter.

1 (2) The hospital or facility designated to provide outpatient
2 care or the secretary may modify the conditions for continued release
3 when such modification is in the best interest of the person.
4 Notification of such changes shall be sent to all persons receiving a
5 copy of the original conditions.

6 (3)(a) If the hospital or facility designated to provide
7 outpatient care, the designated mental health professional, or the
8 secretary determines that:

9 (i) A conditionally released person is failing to adhere to the
10 terms and conditions of his or her release;

11 (ii) Substantial deterioration in a conditionally released
12 person's functioning has occurred;

13 (iii) There is evidence of substantial decompensation with a
14 reasonable probability that the decompensation can be reversed by
15 further inpatient treatment; or

16 (iv) The person poses a likelihood of serious harm.

17 Upon notification by the hospital or facility designated to
18 provide outpatient care, or on his or her own motion, the designated
19 mental health professional or the secretary may order that the
20 conditionally released person be apprehended and taken into custody
21 and temporarily detained in an evaluation and treatment facility in
22 or near the county in which he or she is receiving outpatient
23 treatment.

24 (b) The hospital or facility designated to provide outpatient
25 treatment shall notify the secretary or designated mental health
26 professional when a conditionally released person fails to adhere to
27 terms and conditions of his or her conditional release or experiences
28 substantial deterioration in his or her condition and, as a result,
29 presents an increased likelihood of serious harm. The designated
30 mental health professional or secretary shall order the person
31 apprehended and temporarily detained in an evaluation and treatment
32 facility in or near the county in which he or she is receiving
33 outpatient treatment.

34 (c) A person detained under this subsection (3) shall be held
35 until such time, not exceeding five days, as a hearing can be
36 scheduled to determine whether or not the person should be returned
37 to the hospital or facility from which he or she had been
38 conditionally released. The designated mental health professional or
39 the secretary may modify or rescind such order at any time prior to
40 commencement of the court hearing.

1 (d) The court that originally ordered commitment shall be
2 notified within two judicial days of a person's detention under the
3 provisions of this section, and the designated mental health
4 professional or the secretary shall file his or her petition and
5 order of apprehension and detention with the court that originally
6 ordered commitment or with the court in the county in which the
7 person is detained and serve them upon the person detained. His or
8 her attorney, if any, and his or her guardian or conservator, if any,
9 shall receive a copy of such papers as soon as possible. Such person
10 shall have the same rights with respect to notice, hearing, and
11 counsel as for an involuntary treatment proceeding, except as
12 specifically set forth in this section and except that there shall be
13 no right to jury trial. The venue for proceedings regarding a
14 petition for modification or revocation of an order for conditional
15 release shall be in the county in which the petition was filed. The
16 issues to be determined shall be: (i) Whether the conditionally
17 released person did or did not adhere to the terms and conditions of
18 his or her conditional release; (ii) that substantial deterioration
19 in the person's functioning has occurred; (iii) there is evidence of
20 substantial decompensation with a reasonable probability that the
21 decompensation can be reversed by further inpatient treatment; or
22 (iv) there is a likelihood of serious harm; and, if any of the
23 conditions listed in this subsection (3)(d) have occurred, whether
24 the terms of conditional release should be modified or the person
25 should be returned to the facility.

26 (e) In determining whether or not to modify the terms of
27 conditional release or return the person to the facility:

28 (i) The court must consider the symptoms and behavior of the
29 person in light of all available evidence concerning the person's
30 historical behavior, which may include information provided by
31 credible witnesses as defined in RCW 71.05.212(2); and

32 (ii) If the petition is based on the person's failure to adhere
33 to the terms or conditions of his or her release, the court must give
34 great weight to information regarding symptoms or behavior that: (A)
35 Are closely associated with symptoms or behavior which preceded and
36 led to a past incident of involuntary hospitalization, severe
37 deterioration, or one or more violent acts; (B) represent a marked
38 and concerning change in the baseline behavior of the person; and (C)
39 indicate that without modified terms or return of the person to the
40 facility, continued deterioration is probable.

1 (f) Pursuant to the determination of the court upon such hearing,
2 the conditionally released person shall either continue to be
3 conditionally released on the same or modified conditions or shall be
4 returned for involuntary treatment on an inpatient basis subject to
5 release at the end of the period for which he or she was committed
6 for involuntary treatment, or otherwise in accordance with the
7 provisions of this chapter. Such hearing may be waived by the person
8 and his or her counsel and his or her guardian or conservator, if
9 any, but shall not be waivable unless all such persons agree to
10 waive, and upon such waiver the person may be returned for
11 involuntary treatment or continued on conditional release on the same
12 or modified conditions.

13 (4) The proceedings set forth in subsection (3) of this section
14 may be initiated by the designated mental health professional or the
15 secretary on the same basis set forth therein without requiring or
16 ordering the apprehension and detention of the conditionally released
17 person, in which case the court hearing shall take place in not less
18 than five days from the date of service of the petition upon the
19 conditionally released person. The petition may be filed in the court
20 that originally ordered commitment or with the court in the county in
21 which the person is present. The venue for the proceedings regarding
22 the petition for modification or revocation of an order for
23 conditional release shall be in the county in which the petition was
24 filed.

25 Upon expiration of the period of commitment, or when the person
26 is released from outpatient care, notice in writing to the court
27 which committed the person for treatment shall be provided.

28 (5) The grounds and procedures for revocation of less restrictive
29 alternative treatment shall be the same as those set forth in this
30 section for conditional releases.

31 (6) In the event of a revocation of a conditional release, the
32 subsequent treatment period may be for no longer than the actual
33 period authorized in the original court order.

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