S-1549.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 5706**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Human Services, Mental Health & Housing (originally sponsored by Senators Becker, Rivers, Bailey, Brown, O'Ban, Fortunato, and Warnick)

AN ACT Relating to parent-initiated behavioral health treatment for children aged thirteen to seventeen years old; amending RCW 71.34.600, 71.34.600, 71.34.650, 71.34.650, 71.34.660, and 71.34.660; reenacting and amending RCW 71.34.020 and 71.34.020; adding a new section to chapter 71.34 RCW; providing an effective date; and providing an expiration date.

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

**Sec.**  RCW 71.34.020 and 2016 c 155 s 17 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "Department" means the department of social and health services.

(5) "Designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a designated mental health professional described in this chapter.

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, 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 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.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual 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 (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(14) "Mental health professional" means a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(15) "Minor" means any person under the age of eighteen years.

(16) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025.

(17) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(18) "Personal representative" means the same as in the regulations implementing the federal health insurance portability and accountability act.

(19) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW.

((~~(19)~~)) (20) "Professional person in charge" or "professional person" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

((~~(20)~~)) (21) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

((~~(21)~~)) (22) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

((~~(22)~~)) (23) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

((~~(23)~~)) (24) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

((~~(24)~~)) (25) "Secretary" means the secretary of the department or secretary's designee.

((~~(25)~~)) (26) "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.

((~~(26)~~)) (27) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

**Sec.**  RCW 71.34.020 and 2016 sp.s. c 29 s 254 and 2016 c 155 s 17 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(2) "Approved substance use disorder treatment program" means a program for minors with substance use disorders provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW.

(3) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(4) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

(5) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(6) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(7) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

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

(9) "Designated crisis responder" means a person designated by a behavioral health organization to perform the duties specified in this chapter.

(10) "Drug addiction" means a disease, characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(12) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(13) "Gravely disabled minor" means a minor who, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals, 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 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.

(14) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, residential treatment facility certified by the department as an evaluation and treatment facility for minors, secure detoxification facility for minors, or approved substance use disorder treatment program for minors.

(15) "Intoxicated minor" means a minor whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(16) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(17) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual 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 (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(18) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder or substance use disorder; or (b) prevent the progression of a substance use disorder that endangers life or causes suffering and pain, or results in illness or infirmity or threatens to cause or aggravate a handicap, or causes physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(19) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or intellectual disabilities alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(20) "Mental health professional" means a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(21) "Minor" means any person under the age of eighteen years.

(22) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed service providers as identified by RCW 71.24.025.

(23) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(24) "Personal representative" means the same as in the regulations implementing the federal health insurance portability and accountability act.

(25) "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, that constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, that is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders.

((~~(25)~~)) (26) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW.

((~~(26)~~)) (27) "Professional person in charge" or "professional person" means a physician, other mental health professional, or other person empowered by an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program with authority to make admission and discharge decisions on behalf of that facility.

((~~(27)~~)) (28) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of persons who have a mental illness or who are emotionally disturbed, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

((~~(28)~~)) (29) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

((~~(29)~~)) (30) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

((~~(30)~~)) (31) "Public agency" means any evaluation and treatment facility or institution, or hospital, or approved substance use disorder treatment program that is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments.

((~~(31)~~)) (32) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

((~~(32)~~)) (33) "Secretary" means the secretary of the department or secretary's designee.

((~~(33)~~)) (34) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that:

(a) Provides for intoxicated minors:

(i) Evaluation and assessment, provided by certified chemical dependency professionals;

(ii) Acute or subacute detoxification services; and

(iii) Discharge assistance provided by certified chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the minor;

(b) Includes security measures sufficient to protect the patients, staff, and community; and

(c) Is certified as such by the department.

((~~(34)~~)) (35) "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.

((~~(35)~~)) (36) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

((~~(36)~~)) (37) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

**Sec.**  RCW 71.34.600 and 2007 c 375 s 11 are each amended to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to an evaluation and treatment facility or an inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. The parent shall be considered the personal representative of the child except as provided under section 9 of this act. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section except that no provider may refuse to treat a minor under the provisions of this section solely on the basis that the minor has not consented to the treatment. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.610, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" means "professional person" as defined in RCW 71.05.020.

**Sec.**  RCW 71.34.600 and 2016 sp.s. c 29 s 263 are each amended to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to:

(a) An evaluation and treatment facility or an inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment; or

(b) A secure detoxification facility or approved substance use disorder treatment program and request that a substance use disorder assessment be conducted by a professional person to determine whether the minor has a substance use disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder or has a substance use disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. The parent shall be considered the personal representative of the child except as provided under section 9 of this act. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section except that no provider may refuse to treat a minor under the provisions of this section solely on the basis that the minor has not consented to the treatment. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.610, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" means "professional person" as defined in RCW 71.05.020.

**Sec.**  RCW 71.34.650 and 1998 c 296 s 18 are each amended to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment. If, in the judgment of the provider, it is determined that it is a medical necessity for the minor to receive outpatient treatment, the parent shall be considered the personal representative for the minor except as provided under section 9 of this act, and the provider shall collaborate with the parent to determine a course of treatment for the minor.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person may evaluate whether the minor has a mental disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 71.34.500 or 71.34.600 shall be discharged immediately from inpatient treatment upon written request of the parent.

**Sec.**  RCW 71.34.650 and 2016 sp.s. c 29 s 265 are each amended to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to((~~:~~

~~(a) A~~)) either a provider of outpatient mental health treatment or a provider of outpatient substance abuse disorder treatment and request that an appropriately trained professional person examine the minor to determine whether the minor ((~~has a mental disorder and~~)) is in need of outpatient treatment((~~; or~~

~~(b) A provider of outpatient substance use disorder treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a substance use disorder and is in need of outpatient treatment~~)). If, in the judgment of the provider, it is determined that it is a medical necessity for the minor to receive outpatient treatment, the parent shall be considered the personal representative for the minor except as provided under section 9 of this act, and the provider shall collaborate with the parent to determine a course of treatment for the minor.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person may evaluate whether the minor has a mental disorder or substance use disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 71.34.500 or 71.34.600 shall be discharged immediately from inpatient treatment upon written request of the parent.

**Sec.**  RCW 71.34.660 and 2005 c 371 s 3 are each amended to read as follows:

(1) A minor child shall have no cause of action against an evaluation and treatment facility, inpatient facility, or provider of outpatient mental health treatment for admitting or accepting the minor in good faith for evaluation or treatment under RCW 71.34.600 or 71.34.650 based solely upon the fact that the minor did not consent to evaluation or treatment if the minor's parent has consented to the evaluation or treatment.

(2) A provider shall not be liable for communications with the parent of a minor evaluated under RCW 71.34.600 or 71.34.650 related to the exchange of information or treatment discussions permitted under section 9 of this act.

**Sec.**  RCW 71.34.660 and 2016 sp.s. c 29 s 266 are each amended to read as follows:

(1) A minor child shall have no cause of action against an evaluation and treatment facility, secure detoxification facility, approved substance use disorder treatment program, inpatient facility, or provider of outpatient mental health treatment or outpatient substance use disorder treatment for admitting or accepting the minor in good faith for evaluation or treatment under RCW 71.34.600 or 71.34.650 based solely upon the fact that the minor did not consent to evaluation or treatment if the minor's parent has consented to the evaluation or treatment.

(2) A provider shall not be liable for communications with the parent of a minor evaluated under RCW 71.34.600 or 71.34.650 related to the exchange of information or treatment discussions permitted under section 9 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 71.34 RCW to read as follows:

During the evaluation of a minor at the request of a parent under RCW 71.34.600 or 71.34.650 and during the course of medically necessary treatment commenced pursuant to this evaluation, the parent shall be considered the personal representative of the minor for the purpose of transmission of medical information, making treatment decisions, and reviewing the compliance of the minor with treatment recommendations. RCW 71.34.500 through 71.34.530 are suspended for the limited purpose of this evaluation and course of follow-up treatment, unless the parent agrees to a confidential relationship between the child and the health care provider, or the receipt of new information or a material change in circumstances causes the provider to reevaluate the medical necessity for treatment under RCW 71.34.600 or 71.34.650. Nothing in this section requires a health care provider to enter into a treatment relationship or make disclosures which would, in the judgment of the provider, place the child at risk of harm. The obligation to share treatment information with a parent under this section shall not include a right of access to psychotherapy notes as defined under the federal health insurance portability and accountability act. This section does not authorize disclosure to the parent of information relating to the substance use disorder treatment of a child to the extent that this disclosure is prohibited under federal law. Disclosure of substance use disorder treatment information to the parent in the role of personal representative is permitted consistent with the other provisions of this section if federal law changes in this area.

NEW SECTION. **Sec.**  Sections 1, 3, 5, and 7 of this act expire April 1, 2018.

NEW SECTION. **Sec.**  Sections 2, 4, 6, and 8 of this act take effect April 1, 2018.

**--- END ---**