
SUBSTITUTE HOUSE BILL 2289

State of Washington

65th Legislature

2018 Regular Session

By House Judiciary (originally sponsored by Representatives Kilduff, Muri, Jinkins, Fey, Sawyer, and Gregerson)

READ FIRST TIME 01/26/18.

1 AN ACT Relating to the release and commitment of persons
2 involuntarily committed after the dismissal of a felony; amending RCW
3 71.05.325, 71.05.325, 71.05.330, 71.05.335, 71.05.340, 71.05.340, and
4 10.77.270; adding new sections to chapter 71.05 RCW; providing an
5 effective date; providing an expiration date; and declaring an
6 emergency.

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

8 **Sec. 1.** RCW 71.05.325 and 2000 c 94 s 7 are each amended to read
9 as follows:

10 (1)(a) Before a person committed under grounds set forth in RCW
11 71.05.280(3) is released because a new petition for involuntary
12 treatment has not been filed under RCW 71.05.320(~~(+2)~~) (4), the
13 superintendent, professional person, or designated mental health
14 professional responsible for the decision whether to file a new
15 petition shall in writing notify the prosecuting attorney of the
16 county in which the criminal charges against the committed person
17 were dismissed, of the decision not to file a new petition for
18 involuntary treatment. Notice shall be provided at least forty-five
19 days before the period of commitment expires. Where the court has
20 made an affirmative special finding under RCW 71.05.280(3)(b) or an

1 affirmative finding under section 9 of this act, the prosecuting
2 attorney shall be entitled to intervene.

3 (b) Where the court has made an affirmative special finding under
4 RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this
5 act, notice of a decision not to file a new petition for involuntary
6 treatment shall be provided to the sheriff of the county in which the
7 criminal charges against the committed person were dismissed, as well
8 as to the sheriff in the county and the chief of police in the city,
9 if any, in which the person will reside. Notice shall be provided at
10 least forty-five days before the period of commitment expires.

11 (2)(a) Before a person committed under grounds set forth in RCW
12 71.05.280(3) is permitted temporarily to leave a treatment facility
13 pursuant to RCW 71.05.270 for any period of time without constant
14 accompaniment by facility staff, the superintendent, professional
15 person in charge of a treatment facility, or his or her professional
16 designee shall in writing notify the prosecuting attorney of any
17 county of the person's destination and the prosecuting attorney of
18 the county in which the criminal charges against the committed person
19 were dismissed. The notice shall be provided at least forty-five days
20 before the anticipated leave and shall describe the conditions under
21 which the leave is to occur.

22 (b) The provisions of RCW 71.05.330(2) apply to proposed leaves,
23 and either or both prosecuting attorneys receiving notice under this
24 subsection may petition the court under RCW 71.05.330(2).

25 (3) Nothing in this section shall be construed to authorize
26 detention of a person unless a valid order of commitment is in
27 effect.

28 (4) The existence of the notice requirements in this section will
29 not require any extension of the leave date in the event the leave
30 plan changes after notification.

31 (5) The notice requirements contained in this section shall not
32 apply to emergency medical transfers.

33 (6) The notice provisions of this section are in addition to
34 those provided in RCW 71.05.425.

35 **Sec. 2.** RCW 71.05.325 and 2016 sp.s. c 29 s 239 are each amended
36 to read as follows:

37 (1)(a) Before a person committed under grounds set forth in RCW
38 71.05.280(3) is released because a new petition for involuntary
39 treatment has not been filed under RCW 71.05.320(~~(+3)~~) (4), the

1 superintendent, professional person, or designated crisis responder
2 responsible for the decision whether to file a new petition shall in
3 writing notify the prosecuting attorney of the county in which the
4 criminal charges against the committed person were dismissed, of the
5 decision not to file a new petition for involuntary treatment. Notice
6 shall be provided at least forty-five days before the period of
7 commitment expires. Where the court has made an affirmative special
8 finding under RCW 71.05.280(3)(b) or an affirmative finding under
9 section 9 of this act, the prosecuting attorney shall be entitled to
10 intervene.

11 (b) Where the court has made an affirmative special finding under
12 RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this
13 act, notice of a decision not to file a new petition for involuntary
14 treatment shall be provided to the sheriff of the county in which the
15 criminal charges against the committed person were dismissed, as well
16 as to the sheriff in the county and the chief of police in the city,
17 if any, in which the person will reside. Notice shall be provided at
18 least forty-five days before the period of commitment expires.

19 (2)(a) Before a person committed under grounds set forth in RCW
20 71.05.280(3) is permitted temporarily to leave a treatment facility
21 pursuant to RCW 71.05.270 for any period of time without constant
22 accompaniment by facility staff, the superintendent, professional
23 person in charge of a treatment facility, or his or her professional
24 designee shall in writing notify the prosecuting attorney of any
25 county of the person's destination and the prosecuting attorney of
26 the county in which the criminal charges against the committed person
27 were dismissed. The notice shall be provided at least forty-five days
28 before the anticipated leave and shall describe the conditions under
29 which the leave is to occur.

30 (b) The provisions of RCW 71.05.330(2) apply to proposed leaves,
31 and either or both prosecuting attorneys receiving notice under this
32 subsection may petition the court under RCW 71.05.330(2).

33 (3) Nothing in this section shall be construed to authorize
34 detention of a person unless a valid order of commitment is in
35 effect.

36 (4) The existence of the notice requirements in this section will
37 not require any extension of the leave date in the event the leave
38 plan changes after notification.

39 (5) The notice requirements contained in this section shall not
40 apply to emergency medical transfers.

1 (6) The notice provisions of this section are in addition to
2 those provided in RCW 71.05.425.

3 **Sec. 3.** RCW 71.05.330 and 1998 c 297 s 20 are each amended to
4 read as follows:

5 (1) Nothing in this chapter shall prohibit the superintendent or
6 professional person in charge of the hospital or facility in which
7 the person is being involuntarily treated from releasing him or her
8 prior to the expiration of the commitment period when, in the opinion
9 of the superintendent or professional person in charge, the person
10 being involuntarily treated no longer presents a likelihood of
11 serious harm.

12 Whenever the superintendent or professional person in charge of a
13 hospital or facility providing involuntary treatment pursuant to this
14 chapter releases a person prior to the expiration of the period of
15 commitment, the superintendent or professional person in charge shall
16 in writing notify the court which committed the person for treatment.

17 (2)(a) Before a person committed under grounds set forth in RCW
18 71.05.280(3) or 71.05.320(~~(+2)~~) (4)(c) is released under this
19 section, the superintendent or professional person in charge shall in
20 writing notify the prosecuting attorney of the county in which the
21 criminal charges against the committed person were dismissed, of the
22 release date. Notice shall be provided at least thirty days before
23 the release date. Within twenty days after receiving notice, the
24 prosecuting attorney may petition the court in the county in which
25 the person is being involuntarily treated for a hearing to determine
26 whether the person is to be released. The prosecuting attorney shall
27 provide a copy of the petition to the superintendent or professional
28 person in charge of the hospital or facility providing involuntary
29 treatment, the attorney, if any, and the guardian or conservator of
30 the committed person. The court shall conduct a hearing on the
31 petition within ten days of filing the petition. The committed person
32 shall have the same rights with respect to notice, hearing, and
33 counsel as for an involuntary treatment proceeding, except as set
34 forth in this subsection and except that there shall be no right to
35 jury trial. The issue to be determined at the hearing is whether or
36 not the person may be released without substantial danger to other
37 persons, or substantial likelihood of committing criminal acts
38 jeopardizing public safety or security. If the court disapproves of
39 the release, it may do so only on the basis of substantial evidence.

1 Pursuant to the determination of the court upon the hearing, the
2 committed person shall be released or shall be returned for
3 involuntary treatment subject to release at the end of the period for
4 which he or she was committed, or otherwise in accordance with the
5 provisions of this chapter.

6 (b) Where the court has made an affirmative special finding under
7 RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this
8 act, notice of early release shall be provided to the sheriff of the
9 county in which the criminal charges against the committed person
10 were dismissed, as well as to the sheriff in the county and the chief
11 of police in the city, if any, in which the person will reside.
12 Notice shall be provided at least thirty days before the release
13 date.

14 **Sec. 4.** RCW 71.05.335 and 1986 c 67 s 7 are each amended to read
15 as follows:

16 (1)(a) In any proceeding under this chapter to modify a
17 commitment order of a person committed to inpatient treatment under
18 grounds set forth in RCW 71.05.280(3) or 71.05.320(~~((+2))~~) (4)(c) in
19 which the requested relief includes treatment less restrictive than
20 detention, the prosecuting attorney shall be entitled to intervene.
21 The party initiating the motion to modify the commitment order shall
22 serve the prosecuting attorney of the county in which the criminal
23 charges against the committed person were dismissed with written
24 notice and copies of the initiating papers.

25 (b) Where the court has made an affirmative special finding under
26 RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this
27 act, notice of intent to modify the commitment order shall be
28 provided to the sheriff of the county in which the criminal charges
29 against the committed person were dismissed, as well as to the
30 sheriff in the county and the chief of police in the city, if any, in
31 which the person will reside.

32 **Sec. 5.** RCW 71.05.340 and 2015 c 250 s 12 are each amended to
33 read as follows:

34 (1)(a) When, in the opinion of the superintendent or the
35 professional person in charge of the hospital or facility providing
36 involuntary treatment, the committed person can be appropriately
37 served by outpatient treatment prior to or at the expiration of the
38 period of commitment, then such outpatient care may be required as a

1 term of conditional release for a period which, when added to the
2 inpatient treatment period, shall not exceed the period of
3 commitment. If the facility or agency designated to provide
4 outpatient treatment is other than the facility providing involuntary
5 treatment, the outpatient facility so designated must agree in
6 writing to assume such responsibility. A copy of the terms of
7 conditional release shall be given to the patient, the designated
8 mental health professional in the county in which the patient is to
9 receive outpatient treatment, and to the court of original
10 commitment.

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

1 jeopardizing public safety or security. If the court disapproves of
2 the conditional release, it may do so only on the basis of
3 substantial evidence. Pursuant to the determination of the court upon
4 the hearing, the conditional release of the person shall be approved
5 by the court on the same or modified conditions or the person shall
6 be returned for involuntary treatment on an inpatient basis subject
7 to release at the end of the period for which he or she was
8 committed, or otherwise in accordance with the provisions of this
9 chapter.

10 (ii) Where the court has made an affirmative special finding
11 under RCW 71.05.280(3)(b) or an affirmative finding under section 9
12 of this act, notice of a decision to conditionally release the person
13 shall be provided to the sheriff of the county in which the criminal
14 charges against the committed person were dismissed, as well as to
15 the sheriff in the county and the chief of police in the city, if
16 any, in which the person will reside. Notice of conditional release
17 shall be provided at least thirty days before the person is released
18 from inpatient care.

19 (2) The facility or agency designated to provide outpatient care
20 or the secretary may modify the conditions for continued release when
21 such modification is in the best interest of the person. Notification
22 of such changes shall be sent to all persons receiving a copy of the
23 original conditions. Enforcement or revocation proceedings related to
24 a conditional release order may occur as provided under RCW
25 71.05.590.

26 **Sec. 6.** RCW 71.05.340 and 2016 sp.s. c 29 s 240 are each amended
27 to read as follows:

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

1 crisis responder in the county in which the patient is to receive
2 outpatient treatment, and to the court of original commitment.

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

1 committed, or otherwise in accordance with the provisions of this
2 chapter.

3 (ii) Where the court has made an affirmative special finding
4 under RCW 71.05.280(3)(b) or an affirmative finding under section 9
5 of this act, notice of a decision to conditionally release the person
6 shall be provided to the sheriff of the county in which the criminal
7 charges against the committed person were dismissed, as well as to
8 the sheriff in the county and the chief of police in the city, if
9 any, in which the person will reside. Notice of conditional release
10 shall be provided at least thirty days before the person is released
11 from inpatient care.

12 (2) The facility or agency designated to provide outpatient care
13 or the secretary may modify the conditions for continued release when
14 such modification is in the best interest of the person. Notification
15 of such changes shall be sent to all persons receiving a copy of the
16 original conditions. Enforcement or revocation proceedings related to
17 a conditional release order may occur as provided under RCW
18 71.05.590.

19 NEW SECTION. Sec. 7. A new section is added to chapter 71.05
20 RCW to read as follows:

21 (1)(a) In cases where the court has made an affirmative special
22 finding under RCW 71.05.280(3)(b) or an affirmative finding under
23 section 9 of this act, at the earliest possible date, and no later
24 than twenty days following notification pursuant to RCW 71.05.325,
25 71.05.330, 71.05.335, or 71.05.340, the prosecuting attorney shall
26 provide written notification to the superintendent or professional
27 person in charge of the hospital or facility providing involuntary
28 treatment, the attorney and the guardian or conservator of the
29 committed person, if any, and law enforcement, of a decision not to
30 intervene.

31 (b) The prosecuting attorney shall also provide written
32 notification to the superintendent or professional person in charge
33 of the hospital or facility providing involuntary treatment, the
34 attorney and the guardian or conservator of the committed person, if
35 any, and law enforcement, as to whether the prosecuting attorney will
36 refile criminal charges upon the person's release. This section does
37 not preclude a prosecuting attorney from refileing charges after the
38 person's release.

1 (2) The law enforcement entities entitled to notification under
2 this section include the following:

3 (a) The chief of police of the city, if any, in which the person
4 will reside;

5 (b) The sheriff of the county in which the person will reside;
6 and

7 (c) The sheriff of the county in which the criminal charges
8 against the committed person were dismissed.

9 **Sec. 8.** RCW 10.77.270 and 2013 c 289 s 3 are each amended to
10 read as follows:

11 (1) The secretary shall establish an independent public safety
12 review panel for the purpose of advising the secretary and the courts
13 with respect to persons who have been found not guilty by reason of
14 insanity, ~~(($\text{\textcircled{e}}$))~~ persons committed under the involuntary treatment
15 act where the court has made a special finding under RCW
16 71.05.280(3)(b), or persons for whom the court has made an
17 affirmative finding under section 9 of this act. The panel shall
18 provide advice regarding all recommendations to the secretary,
19 decisions by the secretary, or actions pending in court: (a) For a
20 change in commitment status; (b) to allow furloughs or temporary
21 leaves accompanied by staff; (c) not to seek further commitment terms
22 under RCW 71.05.320; or (d) to permit movement about the grounds of
23 the treatment facility, with or without the accompaniment of staff.

24 (2) The members of the public safety review panel shall be
25 appointed by the governor for a renewable term of three years and
26 shall include the following:

27 (a) A psychiatrist;

28 (b) A licensed clinical psychologist;

29 (c) A representative of the department of corrections;

30 (d) A prosecutor or a representative of a prosecutor's
31 association;

32 (e) A representative of law enforcement or a law enforcement
33 association;

34 (f) A consumer and family advocate representative; and

35 (g) A public defender or a representative of a defender's
36 association.

37 (3) Thirty days prior to issuing a recommendation for conditional
38 release under RCW 10.77.150 or forty-five days prior to issuing a
39 recommendation for release under RCW 10.77.200, the secretary shall

1 submit its recommendation with the committed person's application and
2 the department's risk assessment to the public safety review panel.
3 The public safety review panel shall complete an independent
4 assessment of the public safety risk entailed by the secretary's
5 proposed conditional release recommendation or release recommendation
6 and provide this assessment in writing to the secretary. The public
7 safety review panel may, within funds appropriated for this purpose,
8 request additional evaluations of the committed person. The public
9 safety review panel may indicate whether it is in agreement with the
10 secretary's recommendation, or whether it would issue a different
11 recommendation. The secretary shall provide the panel's assessment
12 when it is received along with any supporting documentation,
13 including all previous reports of evaluations of the committed person
14 in the person's hospital record, to the court, prosecutor in the
15 county that ordered the person's commitment, and counsel for the
16 committed person.

17 (4) The secretary shall notify the public safety review panel at
18 appropriate intervals concerning any changes in the commitment or
19 custody status of persons found not guilty by reason of insanity,
20 ~~((~~or~~))~~ persons committed under the involuntary treatment act where
21 the court has made a special finding under RCW 71.05.280(3)(b), or
22 persons for whom the court has made an affirmative finding under
23 section 9 of this act. The panel shall have access, upon request, to
24 a committed person's complete hospital record, and any other records
25 deemed necessary by the public safety review panel.

26 (5) The department shall provide administrative and financial
27 support to the public safety review panel. The department, in
28 consultation with the public safety review panel, may adopt rules to
29 implement this section.

30 ~~((6) By December 1, 2014, the public safety review panel shall~~
31 ~~report to the appropriate legislative committees the following:~~

32 ~~(a) Whether the public safety review panel has observed a change~~
33 ~~in statewide consistency of evaluations and decisions concerning~~
34 ~~changes in the commitment status of persons found not guilty by~~
35 ~~reason of insanity;~~

36 ~~(b) Whether the public safety review panel should be given the~~
37 ~~authority to make release decisions and monitor release conditions;~~

38 ~~(c) Whether further changes in the law are necessary to enhance~~
39 ~~public safety when incompetency prevents operation of the criminal~~
40 ~~justice system and long-term commitment of the criminally insane; and~~

1 ~~(d) Any other issues the public safety review panel deems~~
2 ~~relevant.))~~

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 71.05
4 RCW to read as follows:

5 (1) Before the final release, early release, conditional release,
6 or modification of a court order of a person who was committed prior
7 to July 28, 2013, under grounds set forth in RCW 71.05.280(3) where
8 the charge underlying the finding of incompetency is for a felony
9 classified as violent under RCW 9.94A.030, the prosecuting attorney
10 may petition the court to enter an affirmative finding for purposes
11 of determining whether changes in commitment must be reviewed by the
12 public safety review panel under RCW 10.77.270.

13 (2) A petition under subsection (1) of this section must be filed
14 at the earliest possible date, and no later than seven days following
15 notification pursuant to RCW 71.05.325, 71.05.330, 71.05.335, or
16 71.05.340. The petition shall be filed and heard in the court of the
17 county of the facility in which the person is being involuntarily
18 treated for a hearing to determine whether the person meets the
19 criteria under subsection (4) of this section. The prosecuting
20 attorney shall provide a copy of the petition to the superintendent
21 or professional person in charge of the hospital or facility
22 providing involuntary treatment, the committed person's attorney, if
23 any, and the guardian or conservator of the committed person.

24 (3) The court shall conduct a hearing on the petition within ten
25 days of the date the petition is filed. The committed person shall
26 have the same rights with respect to notice, hearing, and counsel as
27 for an involuntary treatment proceeding, except as set forth in this
28 subsection and except that there is no right to jury trial.

29 (4) The issues to be determined at the hearing are: (a) Whether
30 the person was committed under grounds set forth in RCW 71.05.280(3)
31 prior to July 28, 2013; (b) whether the charge underlying the finding
32 of incompetence is for a felony classified as violent under RCW
33 9.94A.030; and (c) whether, as a result of a mental disorder or
34 developmental disability, the person continues to present a
35 substantial likelihood of repeating acts similar to the charged
36 criminal behavior or of committing criminal acts jeopardizing public
37 safety and security.

38 (5) If the court makes a finding by clear, cogent, and convincing
39 evidence that all criteria in subsection (4) of this section are met,

1 the secretary shall submit its recommendation with the committed
2 person's application and the department's risk assessment to the
3 public safety review panel. The public safety review panel must
4 review and make recommendations on the release or modification
5 decision within seven days. Final release, early release, conditional
6 release, or modification of a court order must not be delayed due to
7 the public safety review panel's incapacity to review and make
8 recommendations prior to the final court date.

9 NEW SECTION. **Sec. 10.** Sections 1 and 5 of this act expire April
10 1, 2018.

11 NEW SECTION. **Sec. 11.** Sections 2 and 6 of this act are
12 necessary for the immediate preservation of the public peace, health,
13 or safety, or support of the state government and its existing public
14 institutions, and take effect April 1, 2018.

15 NEW SECTION. **Sec. 12.** Except for sections 2 and 6 of this act,
16 this act is necessary for the immediate preservation of the public
17 peace, health, or safety, or support of the state government and its
18 existing public institutions, and take effect immediately.

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