
HOUSE BILL 2289

State of Washington

65th Legislature

2018 Regular Session

By Representatives Kilduff, Muri, Jenkins, Fey, and Sawyer

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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, 71.05.335, and 10.77.270; adding a new section
4 to chapter 71.05 RCW; providing an effective date; providing an
5 expiration date; and declaring an emergency.

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

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

9 (1) Before a person committed under grounds set forth in RCW
10 71.05.280(3) is released because a new petition for involuntary
11 treatment has not been filed under RCW 71.05.320(~~(+2)~~) (4), the
12 superintendent, professional person, or designated mental health
13 professional responsible for the decision whether to file a new
14 petition shall in writing notify the prosecuting attorney and sheriff
15 of the county in which the criminal charges against the committed
16 person were dismissed, as well as the chief of police of the city, if
17 any, in which the person will reside, of the decision not to file a
18 new petition for involuntary treatment. Notice shall be provided at
19 least forty-five days before the period of commitment expires.

20 (2)(a) Before a person committed under grounds set forth in RCW
21 71.05.280(3) is permitted temporarily to leave a treatment facility

1 pursuant to RCW 71.05.270 for any period of time without constant
2 accompaniment by facility staff, the superintendent, professional
3 person in charge of a treatment facility, or his or her professional
4 designee shall in writing notify the prosecuting attorney of any
5 county of the person's destination and the prosecuting attorney of
6 the county in which the criminal charges against the committed person
7 were dismissed. The notice shall be provided at least forty-five days
8 before the anticipated leave and shall describe the conditions under
9 which the leave is to occur.

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

13 (3) Nothing in this section shall be construed to authorize
14 detention of a person unless a valid order of commitment is in
15 effect.

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

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

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

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

25 (1) Before a person committed under grounds set forth in RCW
26 71.05.280(3) is released because a new petition for involuntary
27 treatment has not been filed under RCW 71.05.320(~~((3))~~) (4), the
28 superintendent, professional person, or designated crisis responder
29 responsible for the decision whether to file a new petition shall in
30 writing notify the prosecuting attorney and sheriff of the county in
31 which the criminal charges against the committed person were
32 dismissed, as well as the chief of police of the city, if any, in
33 which the person will reside, of the decision not to file a new
34 petition for involuntary treatment. Notice shall be provided at least
35 forty-five days before the period of commitment expires.

36 (2)(a) Before a person committed under grounds set forth in RCW
37 71.05.280(3) is permitted temporarily to leave a treatment facility
38 pursuant to RCW 71.05.270 for any period of time without constant
39 accompaniment by facility staff, the superintendent, professional

1 person in charge of a treatment facility, or his or her professional
2 designee shall in writing notify the prosecuting attorney of any
3 county of the person's destination and the prosecuting attorney of
4 the county in which the criminal charges against the committed person
5 were dismissed. The notice shall be provided at least forty-five days
6 before the anticipated leave and shall describe the conditions under
7 which the leave is to occur.

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

11 (3) Nothing in this section shall be construed to authorize
12 detention of a person unless a valid order of commitment is in
13 effect.

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

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

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

21 **Sec. 3.** RCW 71.05.335 and 1986 c 67 s 7 are each amended to read
22 as follows:

23 (1)(a) In any proceeding under this chapter (~~(to modify)~~) in
24 which the petitioner does not pursue an additional period of
25 commitment or modifies a commitment order of a person committed to
26 inpatient treatment under grounds set forth in RCW 71.05.280(3) or
27 71.05.320(~~(+2)~~) (4)(c) in which the requested relief includes
28 treatment less restrictive than detention, the prosecuting attorney
29 shall be entitled to intervene. Intervention includes the ability for
30 the prosecuting attorney to file a new petition for commitment to
31 begin immediately upon expiration of the current order. The party
32 initiating the motion to modify the commitment order shall serve the
33 prosecuting attorney of the county in which the criminal charges
34 against the committed person were dismissed with written notice and
35 copies of the initiating papers.

36 (b) The venue for proceedings regarding prosecutor intervention
37 must be in the county in which the petition was filed.

38 (2) At the earliest possible date, and in no event later than
39 seven days before a conditional, early, or final release of a person

1 initially committed under RCW 71.05.280(3) or 71.05.320(4)(c)
2 following dismissal of a sex, violent, or felony harassment offense
3 pursuant to RCW 10.77.086(4), the prosecuting attorney shall provide
4 written notification to law enforcement of a decision not to
5 intervene. Whenever the criminal charge underlying the finding of
6 incompetence is a felony classified as violent under RCW 9.94A.030,
7 the prosecuting attorney shall also provide notification as to
8 whether the prosecuting attorney will refile criminal charges upon
9 the person's release. This section does not preclude a prosecuting
10 attorney from refiling charges after the person's release.

11 (3) The law enforcement entities entitled to notification under
12 subsection (2) of this section include the following:

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

15 (b) The sheriff of the county in which the person will reside;
16 and

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

19 **Sec. 4.** RCW 10.77.270 and 2013 c 289 s 3 are each amended to
20 read as follows:

21 (1) The secretary shall establish an independent public safety
22 review panel for the purpose of advising the secretary and the courts
23 with respect to persons who have been found not guilty by reason of
24 insanity, ~~((or))~~ persons committed under the involuntary treatment
25 act where the court has made a special finding under RCW
26 71.05.280(3)(b), or persons for whom the court has made an
27 affirmative finding under section 5 of this act. The panel shall
28 provide advice regarding all recommendations to the secretary,
29 decisions by the secretary, or actions pending in court: (a) For a
30 change in commitment status; (b) to allow furloughs or temporary
31 leaves accompanied by staff; (c) not to seek further commitment terms
32 under RCW 71.05.320; or (d) to permit movement about the grounds of
33 the treatment facility, with or without the accompaniment of staff.

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

37 (a) A psychiatrist;

38 (b) A licensed clinical psychologist;

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

1 (d) A prosecutor or a representative of a prosecutor's
2 association;

3 (e) A representative of law enforcement or a law enforcement
4 association;

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

6 (g) A public defender or a representative of a defender's
7 association.

8 (3) Thirty days prior to issuing a recommendation for conditional
9 release under RCW 10.77.150 or forty-five days prior to issuing a
10 recommendation for release under RCW 10.77.200, the secretary shall
11 submit its recommendation with the committed person's application and
12 the department's risk assessment to the public safety review panel.
13 The public safety review panel shall complete an independent
14 assessment of the public safety risk entailed by the secretary's
15 proposed conditional release recommendation or release recommendation
16 and provide this assessment in writing to the secretary. The public
17 safety review panel may, within funds appropriated for this purpose,
18 request additional evaluations of the committed person. The public
19 safety review panel may indicate whether it is in agreement with the
20 secretary's recommendation, or whether it would issue a different
21 recommendation. The secretary shall provide the panel's assessment
22 when it is received along with any supporting documentation,
23 including all previous reports of evaluations of the committed person
24 in the person's hospital record, to the court, prosecutor in the
25 county that ordered the person's commitment, and counsel for the
26 committed person.

27 (4) The secretary shall notify the public safety review panel at
28 appropriate intervals concerning any changes in the commitment or
29 custody status of persons found not guilty by reason of insanity,
30 (~~(or)~~) persons committed under the involuntary treatment act where
31 the court has made a special finding under RCW 71.05.280(3)(b), or
32 persons for whom the court has made an affirmative finding under
33 section 5 of this act. The panel shall have access, upon request, to
34 a committed person's complete hospital record, and any other records
35 deemed necessary by the public safety review panel.

36 (5) The department shall provide administrative and financial
37 support to the public safety review panel. The department, in
38 consultation with the public safety review panel, may adopt rules to
39 implement this section.

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

3 (a) Whether the public safety review panel has observed a change
4 in statewide consistency of evaluations and decisions concerning
5 changes in the commitment status of persons found not guilty by
6 reason of insanity;

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

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

12 (d) Any other issues the public safety review panel deems
13 relevant.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 71.05
15 RCW to read as follows:

16 (1) Prior to the conditional, early, or final release of a person
17 initially committed under RCW 71.05.280(3) or 71.05.320(4)(c)
18 following dismissal of a sex, violent, or felony harassment offense
19 pursuant to RCW 10.77.086(4), whose initial commitment order was
20 entered prior to July 28, 2013, the prosecuting attorney may petition
21 the court to enter an affirmative finding for purposes of determining
22 whether changes in commitment status should be reviewed by the public
23 safety review panel under RCW 10.77.270.

24 (2) A petition under subsection (1) of this section must be filed
25 within ten days after receiving notice of conditional, early, or
26 final release. The prosecuting attorney may petition the court in the
27 county in which the person is being involuntarily treated for a
28 hearing to determine whether the person meets the criteria under
29 subsection (4) of this section. The prosecuting attorney shall
30 provide a copy of the petition to the superintendent or professional
31 person in charge of the hospital or facility providing involuntary
32 treatment, the committed person's attorney, if any, and the guardian
33 or conservator of the committed person.

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

1 (4) The issues to be determined at the hearing are: (a) Whether
2 the charge underlying the finding of incompetence was a violent
3 felony classified under RCW 9.94A.030; (b) whether the person was
4 initially committed under RCW 71.05.280(3) prior to July 28, 2013;
5 and (c) whether, as a result of a mental disorder or developmental
6 disability, the person continues to present a substantial likelihood
7 of repeating acts similar to the charged criminal behavior or of
8 committing criminal acts jeopardizing public safety or security.

9 (5) If the court makes a finding by clear, cogent, and convincing
10 evidence that all criteria in subsection (4) of this section are met,
11 the public safety review panel must review the release decision
12 within seven days. Conditional, early, or final release must not be
13 delayed due to the public safety review panel's incapacity to review
14 and make recommendations prior to the final court date.

15 NEW SECTION. **Sec. 6.** Section 1 of this act expires April 1,
16 2018.

17 NEW SECTION. **Sec. 7.** Section 2 of this act is necessary for the
18 immediate preservation of the public peace, health, or safety, or
19 support of the state government and its existing public institutions,
20 and takes effect April 1, 2018.

21 NEW SECTION. **Sec. 8.** Except for section 2 of this act, this act
22 is necessary for the immediate preservation of the public peace,
23 health, or safety, or support of the state government and its
24 existing public institutions, and takes effect immediately.

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