
SENATE BILL 5106

State of Washington

65th Legislature

2017 Regular Session

By Senator O'Ban

Read first time 01/12/17. Referred to Committee on Human Services,
Mental Health & Housing.

1 AN ACT Relating to clarifying obligations under the involuntary
2 treatment act; amending RCW 71.05.590, 71.05.590, 71.05.590,
3 71.05.154, and 71.05.154; providing effective dates; and providing
4 expiration dates.

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

6 **Sec. 1.** RCW 71.05.590 and 2015 c 250 s 13 are each amended to
7 read as follows:

8 (1) Either an agency or facility designated to monitor or provide
9 services under a less restrictive alternative order or conditional
10 release order, or a designated mental health professional, may take
11 action to enforce, modify, or revoke a less restrictive alternative
12 or conditional release order ~~((if))~~. The agency, facility, or
13 designated mental health professional ~~((determines))~~ must determine
14 that:

15 (a) The person is failing to adhere to the terms and conditions
16 of the court order;

17 (b) Substantial deterioration in the person's functioning has
18 occurred;

19 (c) There is evidence of substantial decompensation with a
20 reasonable probability that the decompensation can be reversed by
21 further evaluation, intervention, or treatment; or

1 (d) The person poses a likelihood of serious harm.

2 (2) Actions taken under this section must include a flexible
3 range of responses of varying levels of intensity appropriate to the
4 circumstances and consistent with the interests of the individual and
5 the public in personal autonomy, safety, recovery, and compliance.
6 Available actions may include, but are not limited to, any of the
7 following:

8 (a) To counsel, advise, or admonish the person as to their rights
9 and responsibilities under the court order, and to offer appropriate
10 incentives to motivate compliance;

11 (b) To increase the intensity of outpatient services provided to
12 the person by increasing the frequency of contacts with the provider,
13 referring the person for an assessment for assertive community
14 services, or by other means;

15 (c) To request a court hearing for review and modification of the
16 court order. The request must be made to the court with jurisdiction
17 over the order and specify the circumstances that give rise to the
18 request and what modification is being sought. The county prosecutor
19 shall assist the agency or facility in requesting this hearing and
20 issuing an appropriate summons to the person. This subsection does
21 not limit the inherent authority of a treatment provider to alter
22 conditions of treatment for clinical reasons, and is intended to be
23 used only when court intervention is necessary or advisable to secure
24 the person's compliance and prevent decompensation or deterioration;

25 (d) To cause the person to be transported by a peace officer,
26 designated mental health professional, or other means to the agency
27 or facility monitoring or providing services under the court order,
28 or to a triage facility, crisis stabilization unit, emergency
29 department, or evaluation and treatment facility for up to twelve
30 hours for the purpose of an evaluation to determine whether
31 modification, revocation, or commitment proceedings are necessary and
32 appropriate to stabilize the person and prevent decompensation,
33 deterioration, or physical harm. Temporary detention for evaluation
34 under this subsection is intended to occur only following a pattern
35 of noncompliance or the failure of reasonable attempts at outreach
36 and engagement, and may occur only when in the clinical judgment of a
37 designated mental health professional or the professional person in
38 charge of an agency or facility designated to monitor less
39 restrictive alternative services temporary detention is appropriate.
40 This subsection does not limit the ability or obligation to pursue

1 revocation procedures under subsection (4) of this section in
2 appropriate circumstances; and

3 (e) To initiate revocation procedures under subsection (4) of
4 this section.

5 (3) The facility or agency designated to provide outpatient
6 treatment shall notify the secretary or designated mental health
7 professional when a person fails to adhere to terms and conditions of
8 court ordered treatment or experiences substantial deterioration in
9 his or her condition and, as a result, presents an increased
10 likelihood of serious harm.

11 (4)(a) A designated mental health professional or the secretary
12 may upon their own motion or notification by the facility or agency
13 designated to provide outpatient care order a person subject to a
14 court order under this section to be apprehended and taken into
15 custody and temporary detention in an evaluation and treatment
16 facility in or near the county in which he or she is receiving
17 outpatient treatment, or initiate proceedings under this subsection
18 (4) without ordering the apprehension and detention of the person.

19 (b) A person detained under this subsection (4) must be held
20 until such time, not exceeding five days, as a hearing can be
21 scheduled to determine whether or not the person should be returned
22 to the hospital or facility from which he or she had been released.
23 If the person is not detained, the hearing must be scheduled within
24 five days of service on the person. The designated mental health
25 professional or the secretary may modify or rescind the order at any
26 time prior to commencement of the court hearing.

27 (c) The designated mental health professional or secretary shall
28 ~~((notify the court that originally ordered commitment within two~~
29 ~~judicial days of a person's detention and))~~ file a revocation
30 petition and order of apprehension and detention with the court
31 ~~((and))~~ of the county where the person is currently located or being
32 detained. The designated mental health professional shall serve the
33 person and their attorney, guardian, and conservator, if any. The
34 person has the same rights with respect to notice, hearing, and
35 counsel as in any involuntary treatment proceeding, except as
36 specifically set forth in this section. There is no right to jury
37 trial. The venue for proceedings ~~((regarding a petition for~~
38 ~~modification or revocation must be in))~~ is the county ~~((in which))~~
39 where the petition ((was)) is filed. Notice of the filing must be
40 provided to the court that originally ordered commitment, if

1 different from the court of revocation, within two judicial days of
2 the person's detention.

3 (d) The issues for the court to determine are whether: (i) The
4 person adhered to the terms and conditions of the court order; (ii)
5 substantial deterioration in the person's functioning has occurred;
6 (iii) there is evidence of substantial decompensation with a
7 reasonable probability that the decompensation can be reversed by
8 further inpatient treatment; or (iv) there is a likelihood of serious
9 harm; and, if any of the above conditions apply, whether the court
10 should reinstate or modify the person's less restrictive alternative
11 or conditional release order or order the person's detention for
12 inpatient treatment. The person may waive the court hearing and allow
13 the court to enter a stipulated order upon the agreement of all
14 parties. If the court orders detention for inpatient treatment, the
15 treatment period may be for no longer than the period authorized in
16 the original court order.

17 (e) Revocation proceedings under this subsection (4) are not
18 allowable if the current commitment is solely based on the person
19 being in need of assisted outpatient mental health treatment. In
20 order to obtain a court order for detention for inpatient treatment
21 under this circumstance, a petition must be filed under RCW 71.05.150
22 or 71.05.153.

23 (5) In determining whether or not to take action under this
24 section the designated mental health professional, agency, or
25 facility must consider the factors specified under RCW 71.05.212 and
26 the court must consider the factors specified under RCW 71.05.245 as
27 they apply to the question of whether to enforce, modify, or revoke a
28 court order for involuntary treatment.

29 **Sec. 2.** RCW 71.05.590 and 2016 sp.s. c 29 s 242 are each amended
30 to read as follows:

31 (1) Either an agency or facility designated to monitor or provide
32 services under a less restrictive alternative order or conditional
33 release order, or a designated crisis responder, may take action to
34 enforce, modify, or revoke a less restrictive alternative or
35 conditional release order ~~((if))~~. The agency, facility, or designated
36 crisis responder ~~((determines))~~ must determine that:

37 (a) The person is failing to adhere to the terms and conditions
38 of the court order;

1 (b) Substantial deterioration in the person's functioning has
2 occurred;

3 (c) There is evidence of substantial decompensation with a
4 reasonable probability that the decompensation can be reversed by
5 further evaluation, intervention, or treatment; or

6 (d) The person poses a likelihood of serious harm.

7 (2) Actions taken under this section must include a flexible
8 range of responses of varying levels of intensity appropriate to the
9 circumstances and consistent with the interests of the individual and
10 the public in personal autonomy, safety, recovery, and compliance.
11 Available actions may include, but are not limited to, any of the
12 following:

13 (a) To counsel, advise, or admonish the person as to their rights
14 and responsibilities under the court order, and to offer appropriate
15 incentives to motivate compliance;

16 (b) To increase the intensity of outpatient services provided to
17 the person by increasing the frequency of contacts with the provider,
18 referring the person for an assessment for assertive community
19 services, or by other means;

20 (c) To request a court hearing for review and modification of the
21 court order. The request must be made to the court with jurisdiction
22 over the order and specify the circumstances that give rise to the
23 request and what modification is being sought. The county prosecutor
24 shall assist the agency or facility in requesting this hearing and
25 issuing an appropriate summons to the person. This subsection does
26 not limit the inherent authority of a treatment provider to alter
27 conditions of treatment for clinical reasons, and is intended to be
28 used only when court intervention is necessary or advisable to secure
29 the person's compliance and prevent decompensation or deterioration;

30 (d) To cause the person to be transported by a peace officer,
31 designated crisis responder, or other means to the agency or facility
32 monitoring or providing services under the court order, or to a
33 triage facility, crisis stabilization unit, emergency department, or
34 to an evaluation and treatment facility if the person is committed
35 for mental health treatment, or to a secure detoxification facility
36 with available space or an approved substance use disorder treatment
37 program with available space if the person is committed for substance
38 use disorder treatment. The person may be detained at the facility
39 for up to twelve hours for the purpose of an evaluation to determine
40 whether modification, revocation, or commitment proceedings are

1 necessary and appropriate to stabilize the person and prevent
2 decompensation, deterioration, or physical harm. Temporary detention
3 for evaluation under this subsection is intended to occur only
4 following a pattern of noncompliance or the failure of reasonable
5 attempts at outreach and engagement, and may occur only when in the
6 clinical judgment of a designated crisis responder or the
7 professional person in charge of an agency or facility designated to
8 monitor less restrictive alternative services temporary detention is
9 appropriate. This subsection does not limit the ability or obligation
10 to pursue revocation procedures under subsection (4) of this section
11 in appropriate circumstances; and

12 (e) To initiate revocation procedures under subsection (4) of
13 this section.

14 (3) The facility or agency designated to provide outpatient
15 treatment shall notify the secretary or designated crisis responder
16 when a person fails to adhere to terms and conditions of court
17 ordered treatment or experiences substantial deterioration in his or
18 her condition and, as a result, presents an increased likelihood of
19 serious harm.

20 (4)(a) A designated crisis responder or the secretary may upon
21 their own motion or notification by the facility or agency designated
22 to provide outpatient care order a person subject to a court order
23 under this chapter to be apprehended and taken into custody and
24 temporary detention in an evaluation and treatment facility in or
25 near the county in which he or she is receiving outpatient treatment
26 if the person is committed for mental health treatment, or, if the
27 person is committed for substance use disorder treatment, in a secure
28 detoxification facility or approved substance use disorder treatment
29 program if either is available in or near the county in which he or
30 she is receiving outpatient treatment and has adequate space.
31 Proceedings under this subsection (4) may be initiated without
32 ordering the apprehension and detention of the person.

33 (b) A person detained under this subsection (4) must be held
34 until such time, not exceeding five days, as a hearing can be
35 scheduled to determine whether or not the person should be returned
36 to the hospital or facility from which he or she had been released.
37 If the person is not detained, the hearing must be scheduled within
38 five days of service on the person. The designated crisis responder
39 or the secretary may modify or rescind the order at any time prior to
40 commencement of the court hearing.

1 (c) The designated crisis responder or secretary shall (~~notify~~
2 ~~the court that originally ordered commitment within two judicial days~~
3 ~~of a person's detention and~~) file a revocation petition and order of
4 apprehension and detention with the court (~~and~~) of the county where
5 the person is currently located or being detained. The designated
6 crisis responder shall serve the person and their attorney, guardian,
7 and conservator, if any. The person has the same rights with respect
8 to notice, hearing, and counsel as in any involuntary treatment
9 proceeding, except as specifically set forth in this section. There
10 is no right to jury trial. The venue for proceedings (~~regarding a~~
11 ~~petition for modification or revocation must be in~~) is the county
12 (~~in which~~) where the petition (~~was~~) is filed. Notice of the
13 filing must be provided to the court that originally ordered
14 commitment, if different from the court of revocation, within two
15 judicial days of the person's detention.

16 (d) The issues for the court to determine are whether: (i) The
17 person adhered to the terms and conditions of the court order; (ii)
18 substantial deterioration in the person's functioning has occurred;
19 (iii) there is evidence of substantial decompensation with a
20 reasonable probability that the decompensation can be reversed by
21 further inpatient treatment; or (iv) there is a likelihood of serious
22 harm; and, if any of the above conditions apply, whether the court
23 should reinstate or modify the person's less restrictive alternative
24 or conditional release order or order the person's detention for
25 inpatient treatment. The person may waive the court hearing and allow
26 the court to enter a stipulated order upon the agreement of all
27 parties. If the court orders detention for inpatient treatment, the
28 treatment period may be for no longer than the period authorized in
29 the original court order. A court may not issue an order to detain a
30 person for inpatient treatment in a secure detoxification facility or
31 approved substance use disorder treatment program under this
32 subsection unless there is a secure detoxification facility or
33 approved substance use disorder treatment program available and with
34 adequate space for the person.

35 (e) Revocation proceedings under this subsection (4) are not
36 allowable if the current commitment is solely based on the person
37 being in need of assisted outpatient mental health treatment. In
38 order to obtain a court order for detention for inpatient treatment
39 under this circumstance, a petition must be filed under RCW 71.05.150
40 or 71.05.153.

1 (5) In determining whether or not to take action under this
2 section the designated crisis responder, agency, or facility must
3 consider the factors specified under RCW 71.05.212 and the court must
4 consider the factors specified under RCW 71.05.245 as they apply to
5 the question of whether to enforce, modify, or revoke a court order
6 for involuntary treatment.

7 **Sec. 3.** RCW 71.05.590 and 2016 sp.s. c 29 s 243 are each amended
8 to read as follows:

9 (1) Either an agency or facility designated to monitor or provide
10 services under a less restrictive alternative order or conditional
11 release order, or a designated crisis responder, may take action to
12 enforce, modify, or revoke a less restrictive alternative or
13 conditional release order ~~((if))~~. The agency, facility, or designated
14 crisis responder ~~((determines))~~ must determine that:

15 (a) The person is failing to adhere to the terms and conditions
16 of the court order;

17 (b) Substantial deterioration in the person's functioning has
18 occurred;

19 (c) There is evidence of substantial decompensation with a
20 reasonable probability that the decompensation can be reversed by
21 further evaluation, intervention, or treatment; or

22 (d) The person poses a likelihood of serious harm.

23 (2) Actions taken under this section must include a flexible
24 range of responses of varying levels of intensity appropriate to the
25 circumstances and consistent with the interests of the individual and
26 the public in personal autonomy, safety, recovery, and compliance.
27 Available actions may include, but are not limited to, any of the
28 following:

29 (a) To counsel, advise, or admonish the person as to their rights
30 and responsibilities under the court order, and to offer appropriate
31 incentives to motivate compliance;

32 (b) To increase the intensity of outpatient services provided to
33 the person by increasing the frequency of contacts with the provider,
34 referring the person for an assessment for assertive community
35 services, or by other means;

36 (c) To request a court hearing for review and modification of the
37 court order. The request must be made to the court with jurisdiction
38 over the order and specify the circumstances that give rise to the
39 request and what modification is being sought. The county prosecutor

1 shall assist the agency or facility in requesting this hearing and
2 issuing an appropriate summons to the person. This subsection does
3 not limit the inherent authority of a treatment provider to alter
4 conditions of treatment for clinical reasons, and is intended to be
5 used only when court intervention is necessary or advisable to secure
6 the person's compliance and prevent decompensation or deterioration;

7 (d) To cause the person to be transported by a peace officer,
8 designated crisis responder, or other means to the agency or facility
9 monitoring or providing services under the court order, or to a
10 triage facility, crisis stabilization unit, emergency department, or
11 to an evaluation and treatment facility if the person is committed
12 for mental health treatment, or to a secure detoxification facility
13 or an approved substance use disorder treatment program if the person
14 is committed for substance use disorder treatment. The person may be
15 detained at the facility for up to twelve hours for the purpose of an
16 evaluation to determine whether modification, revocation, or
17 commitment proceedings are necessary and appropriate to stabilize the
18 person and prevent decompensation, deterioration, or physical harm.
19 Temporary detention for evaluation under this subsection is intended
20 to occur only following a pattern of noncompliance or the failure of
21 reasonable attempts at outreach and engagement, and may occur only
22 when in the clinical judgment of a designated crisis responder or the
23 professional person in charge of an agency or facility designated to
24 monitor less restrictive alternative services temporary detention is
25 appropriate. This subsection does not limit the ability or obligation
26 to pursue revocation procedures under subsection (4) of this section
27 in appropriate circumstances; and

28 (e) To initiate revocation procedures under subsection (4) of
29 this section.

30 (3) The facility or agency designated to provide outpatient
31 treatment shall notify the secretary or designated crisis responder
32 when a person fails to adhere to terms and conditions of court
33 ordered treatment or experiences substantial deterioration in his or
34 her condition and, as a result, presents an increased likelihood of
35 serious harm.

36 (4)(a) A designated crisis responder or the secretary may upon
37 their own motion or notification by the facility or agency designated
38 to provide outpatient care order a person subject to a court order
39 under this chapter to be apprehended and taken into custody and
40 temporary detention in an evaluation and treatment facility in or

1 near the county in which he or she is receiving outpatient treatment
2 if the person is committed for mental health treatment, or, if the
3 person is committed for substance use disorder treatment, in a secure
4 detoxification facility or approved substance use disorder treatment
5 program if either is available in or near the county in which he or
6 she is receiving outpatient treatment. Proceedings under this
7 subsection (4) may be initiated without ordering the apprehension and
8 detention of the person.

9 (b) A person detained under this subsection (4) must be held
10 until such time, not exceeding five days, as a hearing can be
11 scheduled to determine whether or not the person should be returned
12 to the hospital or facility from which he or she had been released.
13 If the person is not detained, the hearing must be scheduled within
14 five days of service on the person. The designated crisis responder
15 or the secretary may modify or rescind the order at any time prior to
16 commencement of the court hearing.

17 (c) The designated crisis responder or secretary shall (~~notify~~
18 ~~the court that originally ordered commitment within two judicial days~~
19 ~~of a person's detention and~~) file a revocation petition and order of
20 apprehension and detention with the court (~~and~~) of the county where
21 the person is currently located or being detained. The designated
22 crisis responder shall serve the person and their attorney, guardian,
23 and conservator, if any. The person has the same rights with respect
24 to notice, hearing, and counsel as in any involuntary treatment
25 proceeding, except as specifically set forth in this section. There
26 is no right to jury trial. The venue for proceedings (~~regarding a~~
27 ~~petition for modification or revocation must be in~~) is the county
28 (~~in which~~) where the petition (~~was~~) is filed. Notice of the
29 filing must be provided to the court that originally ordered
30 commitment, if different from the court of revocation, within two
31 judicial days of the person's detention.

32 (d) The issues for the court to determine are whether: (i) The
33 person adhered to the terms and conditions of the court order; (ii)
34 substantial deterioration in the person's functioning has occurred;
35 (iii) there is evidence of substantial decompensation with a
36 reasonable probability that the decompensation can be reversed by
37 further inpatient treatment; or (iv) there is a likelihood of serious
38 harm; and, if any of the above conditions apply, whether the court
39 should reinstate or modify the person's less restrictive alternative
40 or conditional release order or order the person's detention for

1 inpatient treatment. The person may waive the court hearing and allow
2 the court to enter a stipulated order upon the agreement of all
3 parties. If the court orders detention for inpatient treatment, the
4 treatment period may be for no longer than the period authorized in
5 the original court order.

6 (e) Revocation proceedings under this subsection (4) are not
7 allowable if the current commitment is solely based on the person
8 being in need of assisted outpatient mental health treatment. In
9 order to obtain a court order for detention for inpatient treatment
10 under this circumstance, a petition must be filed under RCW 71.05.150
11 or 71.05.153.

12 (5) In determining whether or not to take action under this
13 section the designated crisis responder, agency, or facility must
14 consider the factors specified under RCW 71.05.212 and the court must
15 consider the factors specified under RCW 71.05.245 as they apply to
16 the question of whether to enforce, modify, or revoke a court order
17 for involuntary treatment.

18 **Sec. 4.** RCW 71.05.154 and 2013 c 334 s 1 are each amended to
19 read as follows:

20 ((A)) (1) If a person subject to evaluation under RCW 71.05.150
21 or 71.05.153 is located in an emergency room at the time of
22 evaluation, the designated mental health professional conducting
23 ((an)) the evaluation ((of a person under RCW 71.05.150 or 71.05.153
24 must consult with any examining emergency room physician regarding
25 the physician's observations and opinions relating to the person's
26 condition, and whether, in the view of the physician, detention is
27 appropriate. The designated mental health professional)) shall take
28 serious consideration of observations and opinions by an examining
29 emergency room physician((s)), advanced registered nurse
30 practitioner, or physician assistant in determining whether detention
31 under this chapter is appropriate. The designated mental health
32 professional must document ((the)) his or her consultation with ((an
33 examining emergency room physician)) this professional, ((including))
34 if the professional is available, or his or her review of the
35 ((physician's)) professional's written observations or opinions
36 regarding whether detention of the person is appropriate.

37 (2) This section does not create an exception to the general rule
38 under RCW 71.05.010 creating a presumption that courts should decide
39 petitions under this chapter on their merits in deference to the

1 state's parens patriae or police power interest in protecting the
2 safety of individuals and the public.

3 **Sec. 5.** RCW 71.05.154 and 2016 sp.s. c 29 s 214 are each amended
4 to read as follows:

5 ((A)) (1) If a person subject to evaluation under RCW 71.05.150
6 or 71.05.153 is located in an emergency room at the time of
7 evaluation, the designated crisis responder conducting ((a)) the
8 evaluation ((of a person under RCW 71.05.150 or 71.05.153 must
9 consult with any examining emergency room physician regarding the
10 physician's observations and opinions relating to the person's
11 condition, and whether, in the view of the physician, detention is
12 appropriate. The designated crisis responder)) shall take serious
13 consideration of observations and opinions by an examining emergency
14 room physician((s)), advanced registered nurse practitioner, or
15 physician assistant in determining whether detention under this
16 chapter is appropriate. The designated crisis responder must document
17 ((the)) his or her consultation with ((an examining emergency room
18 physician)) this professional, ((including)) if the professional is
19 available, or his or her review of the ((physician's)) professional's
20 written observations or opinions regarding whether detention of the
21 person is appropriate.

22 (2) This section does not create an exception to the general rule
23 under RCW 71.05.010 creating a presumption that courts should decide
24 petitions under this chapter on their merits in deference to the
25 state's parens patriae or police power interest in protecting the
26 safety of individuals and the public.

27 NEW SECTION. **Sec. 6.** Sections 1 and 4 of this act expire April
28 1, 2018.

29 NEW SECTION. **Sec. 7.** Sections 2 and 5 of this act take effect
30 April 1, 2018.

31 NEW SECTION. **Sec. 8.** Section 2 of this act expires July 1,
32 2026.

1 NEW SECTION. **Sec. 9.** Section 3 of this act takes effect July 1,
2 2026.

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