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**HOUSE BILL 2289**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Kilduff, Muri, Jinkins, Fey, and Sawyer

AN ACT Relating to the release and commitment of persons involuntarily committed after the dismissal of a felony; amending RCW 71.05.325, 71.05.325, 71.05.335, and 10.77.270; adding a new section to chapter 71.05 RCW; providing an effective date; providing an expiration date; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) At the earliest possible date, and in no event later than seven days before a conditional, early, or final release of a person initially committed under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4), the prosecuting attorney shall provide written notification to law enforcement of a decision not to intervene. Whenever the criminal charge underlying the finding of incompetence is a felony classified as violent under RCW 9.94A.030, the prosecuting attorney shall also provide notification as to whether the prosecuting attorney will refile criminal charges upon the person's release. This section does not preclude a prosecuting attorney from refiling charges after the person's release.

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

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

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

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

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

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

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

(a) A psychiatrist;

(b) A licensed clinical psychologist;

(c) A representative of the department of corrections;

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

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

(f) A consumer and family advocate representative; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**