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**SENATE BILL 6109**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Senators O'Ban, Becker, Hasegawa, Muzzall, Wagoner, and Zeiger

AN ACT Relating to ensuring persons with serious mental illness and substance use disorders receive proper care and assistance; adding a new chapter to Title 11 RCW; creating new sections; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that there are a significant number of individuals in the state who are unable to care for themselves due to a mental health or substance use disorder. Current law, including the involuntary treatment act, allows the state to intervene and help those with mental health and substance use disorders, but only if they are found likely to cause serious harm or to be dangerous. This leaves those who are unable to care for themselves, but who are not imminently dangerous, without intervening state help.

The legislature intends to create a pilot program in the three largest counties of the state that allows the counties to intervene and help those who are not found to be imminently dangerous but who are unable to care for themselves due to a mental health or substance use disorder. The legislature intends to provide services and help to these persons in the least restrictive and most clinically appropriate way possible.

NEW SECTION. **Sec.**  (1) A pilot program is hereby established in the three largest counties in Washington for the appointment of court appointed resource executor (CARE) officers for certain persons with a serious mental illness or a substance use disorder.

(2) Prior to a county participating in this pilot program, the health care authority must determine that the county has:

(a) Developed a plan to implement this pilot program in consultation with a behavioral health provider, a provider of supportive housing services, and law enforcement; and

(b) Presented before the county commission on the plan and on available resources for the implementation of this pilot program.

(3) County authorization of this pilot program must be conditioned on the county determining that the following services are available in sufficient quantities with adequate resources and funding levels, taking into account state-provided funding for this pilot program, to serve the identified population:

(a) Supportive community housing that provides wraparound services, with adequate beds available;

(b) County CARE officers trained on the specifics of how to assess and evaluate individuals under this pilot program;

(c) Outpatient mental health counseling;

(d) Coordination and access to medications;

(e) Psychiatric and psychological services;

(f) Substance use disorder services;

(g) Vocational rehabilitation;

(h) Veterans' services;

(i) Family support and consultation services;

(j) A service planning and delivery process that includes the following:

(i) Services that consider culture, linguistics, gender, and age;

(ii) Services to meet the needs of persons who are physically disabled;

(iii) Services to meet the special needs of older adults;

(iv) Family support and consultation services, parenting support and consultation services, and peer support or self-help group support, if appropriate;

(v) Services to employ psychosocial rehabilitation and recovery principles;

(vi) Psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning; and

(vii) Housing for clients that is immediate, transitional, or permanent, or all of these; and

(k) An individual personal services plan that ensures that a person subject to an executorship pursuant to this chapter receives age-appropriate, disability-appropriate, and culturally appropriate services, to the extent feasible, that are designed to enable those persons to do all of the following:

(i) Live in the most independent, least restrictive housing feasible in the local community, and, for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate;

(ii) Engage in the highest level of work or productive activity appropriate to their abilities and experience;

(iii) Create and maintain a support system consisting of friends, family, and participation in community activities;

(iv) Access an appropriate level of academic education or vocational training;

(v) Obtain an adequate income;

(vi) Self-manage their illnesses and exert as much control as possible over both the day-to-day and long-term decisions that affect their lives;

(vii) Access necessary physical health benefits and care and maintain the best possible physical health; and

(viii) Reduce or eliminate the distress caused by the symptoms of mental illness.

(4) The county shall not seek to subject any person to this chapter unless there is funding and available resources to provide all of the services set forth in this chapter.

NEW SECTION. **Sec.**  (1) In the three largest counties in Washington, the county may request an executorship of a person who is incapable of caring for the person's own health and well-being due to a serious mental illness or substance use disorder, as evidenced by frequent detention for evaluation and treatment under chapter 71.05 RCW. The procedure for establishing, administering, and terminating an executorship under this chapter is the same as establishing, administering, and terminating a conservatorship, as provided for in chapter 11.88 RCW, except as follows:

(a) The court may appoint a CARE officer in the county of residence of the individual subject to the executorship and the person to serve as the CARE officer if the person requesting the appointment establishes, and the court makes an express finding, that it is necessary for the protection of the proposed individual subject to the executorship and the granting of the executorship is the least restrictive alternative needed for the protection of the individual subject to the executorship.

(b) The proposed individual subject to the executorship has the right to demand a hearing on the issue of whether the individual meets the criteria for the appointment of a CARE officer under this chapter.

(2) An executorship pursuant to this chapter must not be established if a guardianship or conservatorship otherwise exists under existing law, provided the guardian or conservator of the individual subject to the guardianship or conservatorship has the authority to exercise the provisions of this chapter.

NEW SECTION. **Sec.**  For purposes of this chapter:

(1) "Court appointed resource executor" or "CARE officer" means a court appointed person that makes decisions with respect to the personal affairs of an individual who meets the criteria of this chapter. The scope of the authority of the court appointed resource executor shall be defined by the court.

(2) "Evaluation" consists of multidisciplinary professional analyses of an individual's medical, psychological, educational, social, financial, and legal conditions as they may appear to constitute a problem. Persons providing evaluation services must be properly qualified professionals and may be full-time employees of an agency providing face-to-face, which includes telehealth, evaluation services or may be part-time employees or may be employed on a contractual basis.

(3) "Executorship" refers to a legal arrangement where a person is subject to an individual personal service plan that is being fulfilled by a CARE officer.

(4) "Frequent detention for evaluation and treatment" means five or more detentions for evaluation and treatment under chapter 71.05 RCW in the preceding twelve months.

(5) "Intensive treatment" consists of such hospital and other services as may be indicated. Intensive treatment must be provided by properly qualified professionals and carried out in certified and licensed facilities. Intensive treatment may be provided in hospitals of the United States government by properly qualified professionals. This chapter does not prohibit an intensive treatment facility from also providing seventy-two hour evaluation and treatment.

(6) "Pilot program" means the pilot program created in section 2 of this act.

(7) "Three largest counties in Washington" means the three counties of Washington with the highest population on the effective date of this section.

NEW SECTION. **Sec.**  (1) The purpose of executorship under this chapter is to provide the least restrictive and most clinically appropriate alternative needed for the protection of a person who is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment. If the court determines that the person needs to be moved from the person's current residence, the placement must be in supportive community housing that provides appropriate wraparound services, such as on-site physical and behavioral health services, unless the court, with good cause, determines that such a placement is not sufficient for the protection of that person.

(2) A county CARE officer shall conduct an executorship investigation when recommended by any of the following:

(a) The county sheriff may recommend an evaluation for an executorship to the officer providing executorship investigations in the county of residence of the person if the sheriff determines that a person detained in a jail is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment. The county sheriff may delegate this authority to make a determination and recommendation to the health care service providers in the county jail.

(b) The director of a county mental health department or a county department of public social services may recommend an evaluation for an executorship to the officer providing executorship investigations in the county of residence of the person if the director determines that a person is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment.

(c) The professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment may recommend an evaluation for an executorship to the officer providing executorship investigations in the county of residence of the person if the professional person in charge of the agency providing comprehensive evaluation or the facility providing intensive treatment determines that a person in the professional's care is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment.

(d) The director of a hospital that provides general acute care services, including emergency services, may recommend an evaluation for an executorship to the officer providing executorship investigations in the county of residence of the person if the director determines that a person who presents to the hospital is incapable of caring for the person's own health and well-being due to a serious mental illness and substance use disorder, as evidenced by frequent detention for evaluation and treatment. The hospital director may delegate this authority to make a determination and recommendation to health care providers in the hospital.

(3) If the officer providing the executorship investigation, upon conducting an evaluation for an executorship, finds that the person meets the criteria for executorship and that executorship is the least restrictive alternative, the officer shall petition the superior court in the county of residence of the person to establish an executorship.

NEW SECTION. **Sec.**  (1) The officer providing executorship investigations shall investigate all available alternatives to an executorship and shall recommend an executorship to the court only if no less restrictive alternatives exist. This officer shall render to the court a written report of investigation prior to the hearing. The report to the court must be comprehensive and must contain all relevant aspects of the person's medical, psychological, financial, family, vocational, and social condition, and information obtained from the person's family members, close friends, social worker, or principal therapist. The report must also contain all available information concerning the person's real and personal property. The facilities providing medical treatment, or intensive treatment or comprehensive evaluation, the sheriff, and the referring hospital shall disclose any records or information that may facilitate the investigation. If the officer providing the executorship investigation recommends an executorship, the officer shall explain why all less restrictive alternatives are not sufficient, and if the officer recommends against an executorship, the officer shall set forth all alternatives available. When confidentiality and client privacy laws permit, a copy of the report shall be transmitted to the individual who originally recommended the executorship, and the information shared must be compliant with state and federal laws governing protected health information. The court shall receive the report in evidence and shall read and consider the contents of the report in rendering its judgment.

(2)(a) The report from the CARE officer providing the executorship investigation must contain the officer's recommendations concerning the powers to be granted to and the duties to be imposed upon the CARE officer, the legal disabilities to be imposed upon the individual subject to the executorship, and the proper placement for the individual subject to the executorship pursuant to subsection (5) of this section, and must explain why each of these items is the least restrictive alternative. The report to the court must also contain an agreement signed by the person recommended to serve as the CARE officer certifying that the person or agency is able and willing to serve as the CARE officer. The CARE officer performing the executorship investigation may be the person recommended to serve as the CARE officer to supervise the person under investigation.

(b) The person appointed as the CARE officer under this chapter may be an immediate family member or other close relative related by blood or law.

(3) The person recommended to serve as the CARE officer shall promptly notify the officer providing the executorship investigation whether the person recommended to serve as the CARE officer will accept the position, if appointed. If notified that the person recommended will not accept the position, if appointed, the officer providing the executorship investigation shall promptly recommend another person to serve as the CARE officer.

(4)(a) A person must not be designated as a CARE officer whose interests, activities, obligations, or responsibilities are such as to compromise the person's or agency's ability to represent and safeguard the interests of the individual subject to an executorship. The CARE officer has a fiduciary duty to protect and care for the individual subject to an executorship.

(b) A person serving as a CARE officer under the provisions of this chapter shall, to the extent allowable under state and federal law, have access to the medical records of the individual subject to executorship.

(5) When ordered by the court, after the hearing required by this chapter, a CARE officer appointed pursuant to this chapter shall provide the least restrictive and most clinically appropriate placement for the individual subject to the executorship, which shall be the individual subject to the executorship's residence or a community-based residential care setting in supportive community housing that provides wraparound services, such as on-site physical and behavioral health services, unless the court for good cause orders otherwise.

(6)(a) At any time, an individual subject to an executorship or any person on behalf of the individual subject to the executorship, with the consent of the individual or the individual's counsel, may petition the court for a hearing to contest the powers granted to the CARE officer under subsection (5) of this section.

(b) A request for hearing pursuant to this section does not affect the right of an individual subject to an executorship to petition the court for a rehearing as to the individual's status as an individual subject to an executorship pursuant to subsection (10) of this section. A hearing pursuant to this section does not include trial by jury.

(7)(a) Executorships initiated pursuant to this chapter automatically terminate one year after the appointment of the CARE officer by the superior court, or shorter if ordered by the court. If upon the termination of an initial or a succeeding period of executorship the CARE officer determines that the executorship is still required, the CARE officer may petition the superior court for the officer's reappointment as a CARE officer for a succeeding one-year period, or any shorter period.

(b) Any program in which an individual subject to an executorship is placed shall release the individual subject to an executorship at the individual's request when the executorship terminates. A petition for reappointment filed by the CARE officer must be transmitted to the program at least thirty days before the automatic termination date.

(8)(a) The clerk of the superior court shall notify each CARE officer, the individual subject to executorship, the person in charge of the program in which the individual subject to executorship receives services, and the individual subject to executorship's attorney, at least sixty days before the termination of the executorship. Notification must be given in person or by first-class mail.

(b) If the CARE officer does not petition to reestablish an executorship at or before the termination of the executorship, the court shall issue an order terminating the executorship. The order must be provided to the CARE officer and the individual subject to the executorship in person or by first-class mail.

(c) The courts administering this chapter may adopt rules, forms, and standards necessary to implement this chapter.

(9)(a) At any time, the individual subject to an executorship may petition the superior court for a rehearing as to the individual's status as an individual subject to an executorship.

(b) If an individual subject to an executorship appeals a court's decision to establish an executorship, the executorship continues unless execution of judgment is stayed by the superior court or an appellate court.

(10) A hearing must be held on all petitions under this chapter within thirty days of the date of the petition. If the individual subject to an executorship or proposed individual subject to an executorship is not represented by counsel, the court shall appoint the public defender for the individual within five days after the date of the petition at the county's or city and county's expense. A hearing or trial must not occur under this chapter unless the individual subject to an executorship or proposed individual subject to an executorship is represented by counsel.

NEW SECTION. **Sec.**  The state of Washington shall provide sufficient funds to provide administrative service and care for up to ten individuals in each participating county who qualify for the pilot program created in section 2 of this act.

NEW SECTION. **Sec.**  This chapter takes effect January 1, 2021.

NEW SECTION. **Sec.**  This chapter expires December 31, 2025.

NEW SECTION. **Sec.**  Sections 2 through 9 of this act constitute a new chapter in Title 11 RCW.

NEW SECTION. **Sec.**  This act may be known and cited as the caring for those with behavioral health disorders act.

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