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By Representatives Cooke, Valle, Cody and Thibaudeau

Read first time 02/21/95. Referred to Committee on Children & Family Services.

1 AN ACT Relating to psychiatric outpatient commitment; reenacting
2 and amending RCW 71.05.020; and adding new sections to chapter 71.05
3 RCW.

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

5 **Sec. 1.** RCW 71.05.020 and 1989 c 420 s 13, 1989 c 205 s 8, and
6 1989 c 120 s 2 are each reenacted and amended to read as follows:

7 For the purposes of this chapter:

8 (1) "Gravely disabled" means a condition in which a person, as a
9 result of a mental disorder: (a) Is in danger of serious physical harm
10 resulting from a failure to provide for his essential human needs of
11 health or safety, or (b) manifests severe deterioration in routine
12 functioning evidenced by repeated and escalating loss of cognitive or
13 volitional control over his or her actions and is not receiving such
14 care as is essential for his or her health or safety;

15 (2) "Mental disorder" means any organic, mental, or emotional
16 impairment which has substantial adverse effects on an individual's
17 cognitive or volitional functions;

18 (3) "Likelihood of serious harm" means either: (a) A substantial
19 risk that physical harm will be inflicted by an individual upon his or

1 her own person, as evidenced by threats or attempts to commit suicide
2 or inflict physical harm on one's self, (b) a substantial risk that
3 physical harm will be inflicted by an individual upon another, as
4 evidenced by behavior which has caused such harm or which places
5 another person or persons in reasonable fear of sustaining such harm,
6 or (c) a substantial risk that physical harm will be inflicted by an
7 individual upon the property of others, as evidenced by behavior which
8 has caused substantial loss or damage to the property of others;

9 (4) "Peace officer" means a law enforcement official of a public
10 agency or governmental unit, and includes persons specifically given
11 peace officer powers by any state law, local ordinance, or judicial
12 order of appointment;

13 (5) "Judicial commitment" means a commitment by a court pursuant to
14 the provisions of this chapter;

15 (6) "Public agency" means any evaluation and treatment facility or
16 institution, hospital, or sanitarium which is conducted for, or
17 includes a department or ward conducted for, the care and treatment of
18 persons who are mentally ill or deranged, if the agency is operated
19 directly by, federal, state, county, or municipal government, or a
20 combination of such governments;

21 (7) "Private agency" means any person, partnership, corporation, or
22 association not defined as a public agency, whether or not financed in
23 whole or in part by public funds, which constitutes an evaluation and
24 treatment facility or private institution, hospital, or sanitarium,
25 which is conducted for, or includes a department or ward conducted for
26 the care and treatment of persons who are mentally ill;

27 (8) "Attending staff" means any person on the staff of a public or
28 private agency having responsibility for the care and treatment of a
29 patient;

30 (9) "Department" means the department of social and health services
31 of the state of Washington;

32 (10) "Resource management services" has the meaning given in
33 chapter 71.24 RCW;

34 (11) "Secretary" means the secretary of the department of social
35 and health services, or his designee;

36 (12) "Mental health professional" means a psychiatrist,
37 psychologist, psychiatric nurse, or social worker, and such other
38 mental health professionals as may be defined by rules and regulations
39 adopted by the secretary pursuant to the provisions of this chapter;

1 (13) "Professional person" shall mean a mental health professional,
2 as above defined, and shall also mean a physician, registered nurse,
3 and such others as may be defined by rules and regulations adopted by
4 the secretary pursuant to the provisions of this chapter;

5 (14) "Psychiatrist" means a person having a license as a physician
6 and surgeon in this state who has in addition completed three years of
7 graduate training in psychiatry in a program approved by the American
8 medical association or the American osteopathic association and is
9 certified or eligible to be certified by the American board of
10 psychiatry and neurology;

11 (15) "Psychologist" means a person who has been licensed as a
12 psychologist pursuant to chapter 18.83 RCW;

13 (16) "Social worker" means a person with a master's or further
14 advanced degree from an accredited school of social work or a degree
15 from a graduate school deemed equivalent under rules and regulations
16 adopted by the secretary;

17 (17) "Evaluation and treatment facility" means any facility which
18 can provide directly, or by direct arrangement with other public or
19 private agencies, emergency evaluation and treatment, outpatient care,
20 and short term inpatient care to persons suffering from a mental
21 disorder, and which is certified as such by the department of social
22 and health services: PROVIDED, That a physically separate and
23 separately operated portion of a state hospital may be designated as an
24 evaluation and treatment facility: PROVIDED FURTHER, That a facility
25 which is part of, or operated by, the department of social and health
26 services or any federal agency will not require certification: AND
27 PROVIDED FURTHER, That no correctional institution or facility, or
28 jail, shall be an evaluation and treatment facility within the meaning
29 of this chapter;

30 (18) "Antipsychotic medications," also referred to as
31 "neuroleptics," means that class of drugs primarily used to treat
32 serious manifestations of mental illness associated with thought
33 disorders and currently includes phenothiazines, thioxanthenes,
34 butyrophenone, dihydroindolone, and dibenzoxazipine.

35 (19) "Developmental disability" means that condition defined in RCW
36 71A.10.020(2);

37 (20) "Developmental disabilities professional" means a person who
38 has specialized training and three years of experience in directly
39 treating or working with persons with developmental disabilities and is

1 a psychiatrist or psychologist, or a social worker, and such other
2 developmental disabilities professionals as may be defined by rules
3 adopted by the secretary;

4 (21) "Habilitative services" means those services provided by
5 program personnel to assist persons in acquiring and maintaining life
6 skills and in raising their levels of physical, mental, social, and
7 vocational functioning. Habilitative services include education,
8 training for employment, and therapy. The habilitative process shall
9 be undertaken with recognition of the risk to the public safety
10 presented by the individual being assisted as manifested by prior
11 charged criminal conduct;

12 (22) "Psychologist" means a person who has been licensed as a
13 psychologist pursuant to chapter 18.83 RCW;

14 (23) "Social worker" means a person with a master's or further
15 advanced degree from an accredited school of social work or a degree
16 deemed equivalent under rules adopted by the secretary;

17 (24) "Individualized service plan" means a plan prepared by a
18 developmental disabilities professional with other professionals as a
19 team, for an individual with developmental disabilities, which shall
20 state:

21 (a) The nature of the person's specific problems, prior charged
22 criminal behavior, and habilitation needs;

23 (b) The conditions and strategies necessary to achieve the purposes
24 of habilitation;

25 (c) The intermediate and long-range goals of the habilitation
26 program, with a projected timetable for the attainment;

27 (d) The rationale for using this plan of habilitation to achieve
28 those intermediate and long-range goals;

29 (e) The staff responsible for carrying out the plan;

30 (f) Where relevant in light of past criminal behavior and due
31 consideration for public safety, the criteria for proposed movement to
32 less-restrictive settings, criteria for proposed eventual discharge
33 from involuntary confinement, and a projected possible date for
34 discharge from involuntary confinement; and

35 (g) The type of residence immediately anticipated for the person
36 and possible future types of residences;

37 (25) "Outpatient commitment" means court-ordered outpatient
38 treatment for a person who:

1 (a) Has had more than two involuntary inpatient or outpatient
2 detentions within the last twenty-four months;

3 (b) Is suffering from a severe mental disorder;

4 (c) Is capable of surviving safely in the community with
5 supervision;

6 (d) Based on treatment history and current behavior, is now in need
7 of treatment in order to prevent a relapse or deterioration that would
8 predictably result in the person becoming imminently dangerous or in
9 need of hospitalization;

10 (e) Is unable to make an informed decision to seek or comply with
11 recommended treatment; and

12 (f) Has a reasonable prospect that outpatient treatment will be
13 beneficial;

14 (26) "Outpatient treatment" includes: Medication; individual or
15 group therapy; day or partial day programming activities; services and
16 training, including educational and vocational activities; supervision
17 of living arrangements; and other services prescribed to either
18 alleviate the person's disorder or disability, to maintain semi-
19 independent functioning, or to prevent further deterioration that may
20 reasonably be predicted to result in the need for hospitalization;

21 (27) "Outpatient treatment psychiatrist or agency," "supervising
22 psychiatrist, agency, or provider," or similar terms mean the
23 psychiatrist or agency who is responsible for the management and
24 supervision of a person's outpatient treatment under order of the
25 court;

26 (28) "Subject of the petition" means a person who, under a petition
27 filed with the court, is alleged to meet the criteria for outpatient
28 commitment;

29 (29) "Subject of the order" means a person who has been ordered by
30 the court to obtain outpatient treatment under an order of outpatient
31 commitment.

32 NEW SECTION. Sec. 2. (1) A person may be ordered to obtain
33 involuntary outpatient treatment under this chapter if the court finds
34 that the person:

35 (a) Has had more than two involuntary inpatient or outpatient
36 detentions within the last twenty-four months;

37 (b) Is suffering from a severe mental disorder;

1 (c) Is capable of surviving safely in the community with
2 supervision;

3 (d) Based on treatment history and current behavior, is now in need
4 of treatment in order to prevent a relapse or deterioration that would
5 predictably result in the person becoming imminently dangerous or in
6 need of hospitalization;

7 (e) Is unable to make an informed decision to seek or comply with
8 recommended treatment; and

9 (f) Has a reasonable prospect that outpatient treatment will be
10 beneficial.

11 (2) A person may file a petition, executed subject to the penalties
12 of perjury, with the court alleging that another person meets the
13 criteria for involuntary outpatient treatment. The petition must
14 state:

15 (a) Each of the criteria under subsection (1) (a) through (f) of
16 this section for outpatient commitment;

17 (b) The petitioner's good faith belief that the subject of the
18 petition meets each of the criteria of this section;

19 (c) Facts that support the petitioner's good faith belief that the
20 subject of the petition meets each of the criteria of this section, but
21 the hearing on the petition need not be limited to the stated facts;
22 and

23 (d) That the subject of the petition is present within the county
24 where the petition is filed.

25 (3) The petitioner may request the court to subpoena witnesses, if
26 necessary, who are needed to support the petition.

27 (4) The petition may be accompanied by a statement of a
28 psychiatrist, or of a physician and a mental health professional, who
29 has examined the subject of the petition before the submission of the
30 petition. If the subject of the petition has refused to submit to
31 examination by a psychiatrist, physician, or mental health
32 professional, the fact of the refusal must be alleged in the petition.

33 (5) At a probable cause hearing conducted under RCW 71.05.200,
34 71.05.240, or 71.05.310, the court may order outpatient commitment as
35 an option for treatment without the necessity of receiving a petition
36 for outpatient commitment. However, the criteria for outpatient
37 commitment must be met and supported by the evidence.

1 NEW SECTION. **Sec. 3.** (1) The court shall hold a hearing on a
2 petition filed under section 2 of this act as soon as possible, but
3 within six calendar days after filing of the petition.

4 (2) Notice of the hearing must be delivered personally or mailed by
5 certified or registered mail, return receipt requested, deliverable to
6 addressee only, to the subject of the petition, and those interested
7 parties identified by the petitioner, if any. All reasonable efforts
8 must be used to notify the subject of the petition of the hearing. The
9 subject and necessary witnesses must be notified as soon as possible,
10 but in all cases at least two court days before the hearing. The
11 petitioner shall certify that the notices have been mailed and to whom,
12 but proof of receipt of the notices is not required. Notice must also
13 be served on any other person that the court designates.

14 (3) The notice must include the following:

15 (a) The date, time, and place of hearing, a clear statement of the
16 purpose of the hearing and possible consequences to the subject, and a
17 statement of the legal standard upon which outpatient commitment is
18 authorized;

19 (b) A copy of the petition; and

20 (c) Notice that the subject of the petition is entitled to be
21 represented by an attorney and that the court will appoint a public
22 defender or other attorney for the subject if the subject desires one
23 and is indigent.

24 (4) The court may continue the hearing for failure to timely notify
25 the subject of the petition or those interested parties whom the
26 petitioner designates should receive notice.

27 (5) The time and form of the procedure incident to hearing the
28 issues in the petition must be provided by court rule and be consistent
29 with this section.

30 (6) The hearing may be held at a convenient place within the
31 circuit. The subject of the petition, an interested person, or the
32 court upon its own motion may request a hearing in another court
33 because of inconvenience to the parties, witnesses, or the court, or
34 because of the subject's physical or mental condition.

35 (7) The hearing must be closed to the public, unless the subject of
36 the petition requests otherwise.

37 (8) The subject of the petition shall be present at the hearing.
38 However, if the subject has been notified of the petition and does not

1 appear at the hearing, the court, in its discretion, may go forward
2 with the hearing.

3 (9) The subject of the petition may be represented by an attorney.
4 If the subject desires an attorney and is indigent, or if the court
5 determines that the legal or factual issues raised are of such
6 complexity that the assistance of an attorney is necessary for an
7 adequate presentation of the merits or that the subject of the petition
8 is unable to speak for the subject's self, the court shall order the
9 appointment of a public defender or other attorney to represent the
10 subject and continue the hearing for not more than five days.

11 (10) A subject of the petition may not be ordered to outpatient
12 commitment unless at least one psychiatrist, or a licensed physician
13 and a mental health professional, states the full condition of the
14 subject of the petition and the facts that support the allegation that
15 the subject meets all the criteria for outpatient commitment, the
16 recommended outpatient treatment, and the rationale for the recommended
17 outpatient treatment.

18 (11) If the subject of the petition has refused to be examined by
19 a licensed psychiatrist, the court may request the subject to consent
20 to examination by a psychiatrist or agency appointed by the court. If
21 the subject of the petition does not consent and the court finds
22 sufficient evidence to believe that the allegations in the petition are
23 true, the court may order the commitment of the subject to a
24 psychiatric facility for examination. The commitment may not be for
25 more than seventy-two hours. The examining psychiatrist shall submit
26 the findings and recommendations to the court.

27 (12) The subject of the petition may secure one or more psychiatric
28 examinations and present the findings as evidence at the hearing.

29 NEW SECTION. **Sec. 4.** (1) If, after hearing all relevant evidence,
30 including the results of an examination ordered by the court, if any,
31 the court finds that the subject of the petition filed under section 2
32 of this act does not meet the criteria for outpatient commitment, the
33 court shall dismiss the petition.

34 (2) If, after hearing all relevant evidence, including the results
35 of an examination ordered by the court, if any, the court finds by
36 clear and convincing evidence that the subject of the petition meets
37 the criteria for outpatient commitment, the court shall order the

1 subject to outpatient commitment and treatment for a period of not more
2 than twelve months.

3 NEW SECTION. **Sec. 5.** (1) The court shall state the beginning and
4 ending dates of the period of commitment, which may not exceed twelve
5 months, in an order made under section 4 of this act.

6 (2) The order must also state who should receive notice of intent
7 to terminate the order of outpatient commitment early, in the event
8 that the outpatient treatment psychiatrist or agency determines, before
9 the end of the court-ordered period of treatment, that the order of
10 outpatient commitment should be terminated early.

11 (3) The court shall also designate on the order the outpatient
12 treatment psychiatrist or agency who is to be responsible for the
13 management and supervision of the subject's outpatient treatment, or
14 shall designate the regional support network, who in turn shall
15 designate the agency or psychiatrist. However, the psychiatrist or
16 agency must agree to the designation.

17 (4) The court shall order the subject to obtain outpatient
18 treatment under the treatment plan. The order shall require that the
19 subject cooperate with the treatment provider and comply with the
20 course of treatment.

21 (5) The order must state that if the subject of the order does not
22 comply with the subject's treatment plan and deterioration is evident,
23 the supervising psychiatrist or agency shall recommend to the
24 psychiatric review board, facilitated return to inpatient treatment.
25 The psychiatric review board shall approve or disapprove the
26 recommendation within seventy-two hours of receipt of the
27 recommendation.

28 NEW SECTION. **Sec. 6.** The psychiatric review board may require
29 return of the participant in an outpatient treatment program under
30 sections 2 through 5 of this act to inpatient treatment if the
31 participant does not comply with the treatment plan, and deterioration
32 is evident, and may authorize peace officers to facilitate the return
33 if necessary. In the event the psychiatric review board requires the
34 participant to return to inpatient treatment, it shall notify the court
35 within twenty-four hours of the person being taken into custody.

1 NEW SECTION. **Sec. 7.** The regional support network shall assure
2 that resources are available to cover costs related to outpatient
3 commitment for persons ordered to outpatient commitment.

4 NEW SECTION. **Sec. 8.** A person adversely affected or aggrieved by
5 an order of outpatient commitment under sections 2 through 6 of this
6 act is entitled to judicial review.

7 NEW SECTION. **Sec. 9.** An outpatient commitment order issued under
8 section 4 of this act is automatically and fully terminated at the end
9 of the court-ordered period of outpatient commitment, a period of not
10 more than twelve months, unless a new court order has been obtained as
11 provided in sections 2 through 6 of this act.

12 NEW SECTION. **Sec. 10.** (1) A person may petition the court for the
13 early termination of an order of outpatient commitment issued under
14 sections 2 through 6 of this act during the period of outpatient
15 treatment if done more than sixty days after the most recent hearing
16 involving the subject of the order. The petition must be filed, notice
17 given, hearing held, and order made in the same manner as provided for
18 the original petition alleging that the subject of the order met the
19 criteria for outpatient commitment.

20 (2) The treating psychiatrist may commence the early termination
21 procedure for a subject of the order if the treating psychiatrist finds
22 that the subject no longer meets the criteria for outpatient
23 commitment.

24 (3) To commence the early termination procedure, the treating
25 psychiatrist shall send to the clerk of the court that issued the order
26 for outpatient commitment notification that, in the psychiatrist's
27 opinion, the order should be terminated before the end of the period
28 specified in the court order.

29 (4) The clerk of the court shall, upon receipt of a notification
30 under subsection (3) of this section, prepare and mail, to the persons
31 whom the court order specified are entitled to notice, a notice of
32 intent of early termination of the order. The notice of early
33 termination must be mailed at least five days before the intended date
34 of termination.

35 (5) If an objection is not filed within five days of the mailing of
36 notice, the court shall enter an order of termination.

1 NEW SECTION. **Sec. 11.** A person who has received a notice of
2 intent to terminate an order of outpatient commitment early may file an
3 objection with the court. Upon receipt of an objection, the court
4 shall hold a hearing on the termination. The hearing must be conducted
5 as provided in section 3 of this act. If the court finds by clear and
6 convincing evidence that the subject of the order continues to meet the
7 criteria for outpatient commitment, the court shall order the subject
8 to continue the outpatient treatment for the unexpired period of its
9 earlier order. If the court finds that the subject of the order does
10 not meet the criteria for outpatient commitment, the court shall
11 dismiss the objection and terminate the order early.

12 NEW SECTION. **Sec. 12.** Before the expiration of the period of
13 outpatient commitment ordered by the court, a person, including the
14 treating psychiatrist, may file a petition with the court for an order
15 of continued outpatient commitment. The petition must be filed and
16 notice provided in the same manner as under sections 2 and 3 of this
17 act. The court shall hold a hearing on the petition and make its
18 decision in the same manner as provided under section 3 of this act.
19 The court may order the continued outpatient commitment for not more
20 than twelve months after the date of the hearing. This section is in
21 addition to the provisions on the objection to termination.

22 NEW SECTION. **Sec. 13.** (1) Each regional support network shall
23 have its own psychiatric review board. The regional support network
24 shall appoint the members of the psychiatric review board, for one-year
25 terms, and temporary members as described in subsection (2) of this
26 section. The nominees must have appropriate credentials, licenses, and
27 experience relevant to making decisions under this chapter.

28 (2) The psychiatric review board shall be composed of: (a) Five to
29 seven regular members who must include:

- 30 (i) A duly licensed psychiatrist or physician;
- 31 (ii) A duly licensed mental health professional;
- 32 (iii) A duly licensed attorney;
- 33 (iv) Two lay persons who are active in mental health advocacy
34 within their counties of residence;
- 35 (v) A consumer who has received services in the county of the
36 consumer's residence within the last five years; and

1 (b) Temporary members required by the circumstances on an as-needed
2 basis.

3 (3) A regional support network shall formulate its own protocols
4 for nomination of candidates, screening of candidates, appointment,
5 filling of vacancies, meetings, appointment of a chair, and procedures
6 of the psychiatric review board.

7 (4) The psychiatric review board shall monitor sections 2 through
8 12 of this act for procedural and substantive compliance. The
9 psychiatric review board shall make determinations on such issues as
10 are properly brought before it. The psychiatric review board shall
11 report to the court, and other agencies, as required. The regional
12 support networks shall formulate the policies, procedures,
13 jurisdiction, reporting requirements, and other operating procedures of
14 the psychiatric review board.

15 NEW SECTION. **Sec. 14.** Sections 2 through 13 of this act are each
16 added to chapter 71.05 RCW.

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