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**SECOND SUBSTITUTE SENATE BILL 5269**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators O'Ban, Darneille, Rolfes, Dansel, Miloscia, Pearson, Bailey, Padden, Becker, Frockt, Habib, and Pedersen)

AN ACT Relating to court review of detention decisions under the involuntary treatment act; amending RCW 71.05.130 and 71.05.160; adding new sections to chapter 71.05 RCW; and creating a new section.

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

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

(1) An immediate family member, guardian, or conservator of a person who disagrees with the decision of a designated mental health professional not to (a) detain a person for evaluation and treatment under RCW 71.05.150 or 71.05.153; or (b) take action within forty-eight hours of a request for investigation being submitted to the designated mental health professional; may petition the superior court for review of the designated mental health professional's decision.

(2) The petition must be accompanied by a sworn declaration from the petitioner, and other witnesses if desired, describing why the person should be detained for evaluation and treatment. The petition must be submitted on forms developed by the courts for this purpose. The petition must contain the following information:

(a) A description of the relationship between the petitioner and the person;

(b) The date on which an investigation was requested from the designated mental health professional; and

(c) An optional sworn statement from a mental health professional familiar with the person who is the subject of the petition describing the declarant's qualifications and offering a professional opinion in support of detention with reference to legal criteria under this chapter.

(3) Any immediate family member may, following the filing of the petition and before the court's decision, submit a declaration to the court in support of or in opposition to the designated mental health professional's decision.

(4) The court shall review the petition to determine whether the petition raises sufficient evidence to support the allegation. If the court so finds, it shall provide a copy of the petition and accompanying information to the designated mental health professional agency with an order for the agency to provide the court and the petitioner with a written sworn statement providing a detailed description of the designated mental health professional's investigation and the basis for the decision not to seek initial detention within one business day. The court must issue a final ruling on the petition within five business days after it is filed. The court shall dismiss the petition at any time if it finds that the person has been detained for evaluation and treatment or that the person has voluntarily accepted appropriate treatment.

(5) If, after reviewing all the information provided to the court, the court finds that: (a) There is probable cause to support a petition for detention; and (b) the person has refused or failed to accept appropriate evaluation and treatment voluntarily; the court may enter an order for initial detention.

(6) If the court enters an order for initial detention, it shall provide the order to the designated mental health professional agency, which shall execute the order without delay. The designated mental health professional may notify a peace officer to take the person or cause the person to be taken into custody and placed in an evaluation and treatment facility. At the time the person is taken into custody there must commence to be served on the person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention. Subsequent procedure must be followed as if the person had been detained under RCW 71.05.150. An order for initial detention under this section must expire within sixty days.

(7) All filings and records relating to a petition under this section must be held by the court under seal with no public access.

(8) For purposes of this section, "immediate family member" means a spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling.

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

(1) The department and each regional support network or agency employing designated mental health professionals shall publish information in an easily accessible format describing the process for an immediate family member, guardian, or conservator to petition for court review of a detention decision under section 1 of this act.

(2) A designated mental health professional or designated mental health professional agency that receives a request for investigation for possible detention under this chapter must inquire whether the request comes from an immediate family member, guardian, or conservator who would be eligible to petition under section 1 of this act. If the person is not detained within forty-eight hours, the designated mental health professional or designated mental health professional agency must inform the immediate family member, guardian, or conservator about the process to petition for court review under section 1 of this act.

**Sec.**  RCW 71.05.130 and 1998 c 297 s 7 are each amended to read as follows:

In any judicial proceeding for involuntary commitment or detention except under section 1 of this act, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to such commitment or detention((~~: PROVIDED~~)), except that the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter ((~~except in~~)) other than proceedings initiated by such hospitals and institutions seeking fourteen day detention.

**Sec.**  RCW 71.05.160 and 2007 c 375 s 13 are each amended to read as follows:

Any facility receiving a person pursuant to RCW 71.05.150 or 71.05.153 shall require the designated mental health professional to prepare a petition for initial detention stating the circumstances under which the person's condition was made known and stating that there is evidence, as a result of his or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained for the purposes and under the authority of this chapter. If the detention was ordered pursuant to section 1 of this act, the designated mental health professional shall prepare a petition attaching the court's order for initial detention and a copy of the information submitted by the petitioner and designated mental health professional to the court, and otherwise follow normal procedures as if the person were detained under RCW 71.05.150.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150 ((~~or~~)), 71.05.153, or section 1 of this act, on the next judicial day following the initial detention, the designated mental health professional shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2015, in the omnibus appropriations act, this act is null and void.

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