

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2541

64th Legislature
2016 Regular Session

Passed by the House February 11, 2016
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 3, 2016
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2541** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2541

Passed Legislature - 2016 Regular Session

State of Washington 64th Legislature 2016 Regular Session

By House Judiciary (originally sponsored by Representatives Frame, Rodne, Jinkins, Walkinshaw, Riccelli, Senn, Orwall, Muri, S. Hunt, Gregerson, Sawyer, Caldier, Goodman, Haler, Hansen, Kuderer, Appleton, Kilduff, Reykdal, Rossetti, Magendanz, Ormsby, Bergquist, and Stanford)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to less restrictive involuntary treatment orders;
2 and amending RCW 71.05.230, 71.05.240, 71.05.290, 71.05.320, and
3 71.05.585.

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

5 **Sec. 1.** RCW 71.05.230 and 2015 c 250 s 6 are each amended to
6 read as follows:

7 A person detained or committed for seventy-two hour evaluation
8 and treatment or for an outpatient evaluation for the purpose of
9 filing a petition for a less restrictive alternative treatment order
10 may be committed for not more than fourteen additional days of
11 involuntary intensive treatment or ninety additional days of a less
12 restrictive alternative to involuntary intensive treatment. A
13 petition may only be filed if the following conditions are met:

14 (1) The professional staff of the agency or facility providing
15 evaluation services has analyzed the person's condition and finds
16 that the condition is caused by mental disorder and results in a
17 likelihood of serious harm, results in the person being gravely
18 disabled, or results in the person being in need of assisted
19 outpatient mental health treatment, and are prepared to testify those
20 conditions are met; and

1 (2) The person has been advised of the need for voluntary
2 treatment and the professional staff of the facility has evidence
3 that he or she has not in good faith volunteered; and

4 (3) The agency or facility providing intensive treatment or which
5 proposes to supervise the less restrictive alternative is certified
6 to provide such treatment by the department; and

7 (4) The professional staff of the agency or facility or the
8 designated mental health professional has filed a petition with the
9 court for a fourteen day involuntary detention or a ninety day less
10 restrictive alternative. The petition must be signed either by:

11 (a) Two physicians;

12 (b) One physician and a mental health professional;

13 (c) Two psychiatric advanced registered nurse practitioners;

14 (d) One psychiatric advanced registered nurse practitioner and a
15 mental health professional; or

16 (e) A physician and a psychiatric advanced registered nurse
17 practitioner. The persons signing the petition must have examined the
18 person. If involuntary detention is sought the petition shall state
19 facts that support the finding that such person, as a result of
20 mental disorder, presents a likelihood of serious harm, or is gravely
21 disabled and that there are no less restrictive alternatives to
22 detention in the best interest of such person or others. The petition
23 shall state specifically that less restrictive alternative treatment
24 was considered and specify why treatment less restrictive than
25 detention is not appropriate. If an involuntary less restrictive
26 alternative is sought, the petition shall state facts that support
27 the finding that such person, as a result of mental disorder,
28 presents a likelihood of serious harm, is gravely disabled, or is in
29 need of assisted outpatient mental health treatment, and shall set
30 forth (~~a plan for the~~) any recommendations for less restrictive
31 alternative treatment (~~proposed by the facility in accordance with~~
32 ~~RCW 71.05.585~~) services; and

33 (5) A copy of the petition has been served on the detained or
34 committed person, his or her attorney and his or her guardian or
35 conservator, if any, prior to the probable cause hearing; and

36 (6) The court at the time the petition was filed and before the
37 probable cause hearing has appointed counsel to represent such person
38 if no other counsel has appeared; and

39 (7) The petition reflects that the person was informed of the
40 loss of firearm rights if involuntarily committed; and

1 (8) At the conclusion of the initial commitment period, the
2 professional staff of the agency or facility or the designated mental
3 health professional may petition for an additional period of either
4 ninety days of less restrictive alternative treatment or ninety days
5 of involuntary intensive treatment as provided in RCW 71.05.290; and

6 (9) If the hospital or facility designated to provide less
7 restrictive alternative treatment is other than the facility
8 providing involuntary treatment, the outpatient facility so
9 designated to provide less restrictive alternative treatment has
10 agreed to assume such responsibility.

11 **Sec. 2.** RCW 71.05.240 and 2015 c 250 s 7 are each amended to
12 read as follows:

13 (1) If a petition is filed for fourteen day involuntary treatment
14 or ninety days of less restrictive alternative treatment, the court
15 shall hold a probable cause hearing within seventy-two hours of the
16 initial detention or involuntary outpatient evaluation of such person
17 as determined in RCW 71.05.180. If requested by the person or his or
18 her attorney, the hearing may be postponed for a period not to exceed
19 forty-eight hours. The hearing may also be continued subject to the
20 conditions set forth in RCW 71.05.210 or subject to the petitioner's
21 showing of good cause for a period not to exceed twenty-four hours.

22 (2) The court at the time of the probable cause hearing and
23 before an order of commitment is entered shall inform the person both
24 orally and in writing that the failure to make a good faith effort to
25 seek voluntary treatment as provided in RCW 71.05.230 will result in
26 the loss of his or her firearm rights if the person is subsequently
27 detained for involuntary treatment under this section.

28 (3) At the conclusion of the probable cause hearing:

29 (a) If the court finds by a preponderance of the evidence that
30 such person, as the result of mental disorder, presents a likelihood
31 of serious harm, or is gravely disabled, and, after considering less
32 restrictive alternatives to involuntary detention and treatment,
33 finds that no such alternatives are in the best interests of such
34 person or others, the court shall order that such person be detained
35 for involuntary treatment not to exceed fourteen days in a facility
36 certified to provide treatment by the department. If the court finds
37 that such person, as the result of a mental disorder, presents a
38 likelihood of serious harm, or is gravely disabled, but that
39 treatment in a less restrictive setting than detention is in the best

1 interest of such person or others, the court shall order an
2 appropriate less restrictive alternative course of treatment for not
3 to exceed ninety days;

4 (b) If the court finds by a preponderance of the evidence that
5 such person, as the result of a mental disorder, is in need of
6 assisted outpatient mental health treatment, and that the person does
7 not present a likelihood of serious harm or grave disability, the
8 court shall order an appropriate less restrictive alternative course
9 of treatment not to exceed ninety days, and may not order inpatient
10 treatment;

11 (c) An order for less restrictive alternative treatment must
12 ~~((identify the))~~ name the mental health service provider responsible
13 for identifying the services the person will receive~~((r))~~ in
14 accordance with RCW 71.05.585, and must include a requirement that
15 the person cooperate with the services planned by the mental health
16 service provider. ~~((The court may order additional evaluation of the~~
17 ~~person if necessary to identify appropriate services.))~~

18 (4) The court shall specifically state to such person and give
19 such person notice in writing that if involuntary treatment beyond
20 the fourteen day period or beyond the ninety days of less restrictive
21 treatment is to be sought, such person will have the right to a full
22 hearing or jury trial as required by RCW 71.05.310. The court shall
23 also state to the person and provide written notice that the person
24 is barred from the possession of firearms and that the prohibition
25 remains in effect until a court restores his or her right to possess
26 a firearm under RCW 9.41.047.

27 **Sec. 3.** RCW 71.05.290 and 2015 c 250 s 10 are each amended to
28 read as follows:

29 (1) At any time during a person's fourteen day intensive
30 treatment period, the professional person in charge of a treatment
31 facility or his or her professional designee or the designated mental
32 health professional may petition the superior court for an order
33 requiring such person to undergo an additional period of treatment.
34 Such petition must be based on one or more of the grounds set forth
35 in RCW 71.05.280.

36 (2) The petition shall summarize the facts which support the need
37 for further commitment and shall be supported by affidavits signed
38 by:

39 (a) Two examining physicians;

1 (b) One examining physician and examining mental health
2 professional;

3 (c) Two psychiatric advanced registered nurse practitioners;

4 (d) One psychiatric advanced registered nurse practitioner and a
5 mental health professional; or

6 (e) An examining physician and an examining psychiatric advanced
7 registered nurse practitioner. The affidavits shall describe in
8 detail the behavior of the detained person which supports the
9 petition and shall explain what, if any, less restrictive treatments
10 which are alternatives to detention are available to such person, and
11 shall state the willingness of the affiant to testify to such facts
12 in subsequent judicial proceedings under this chapter. If less
13 restrictive alternative treatment is sought, the petition shall set
14 forth (~~(a proposed plan)~~) any recommendations for less restrictive
15 alternative treatment (~~(in accordance with RCW 71.05.585)~~) services.

16 (3) If a person has been determined to be incompetent pursuant to
17 RCW 10.77.086(4), then the professional person in charge of the
18 treatment facility or his or her professional designee or the
19 designated mental health professional may directly file a petition
20 for one hundred eighty day treatment under RCW 71.05.280(3). No
21 petition for initial detention or fourteen day detention is required
22 before such a petition may be filed.

23 **Sec. 4.** RCW 71.05.320 and 2015 c 250 s 11 are each amended to
24 read as follows:

25 (1) If the court or jury finds that grounds set forth in RCW
26 71.05.280 have been proven and that the best interests of the person
27 or others will not be served by a less restrictive treatment which is
28 an alternative to detention, the court shall remand him or her to the
29 custody of the department or to a facility certified for ninety day
30 treatment by the department for a further period of intensive
31 treatment not to exceed ninety days from the date of judgment. If the
32 grounds set forth in RCW 71.05.280(3) are the basis of commitment,
33 then the period of treatment may be up to but not exceed one hundred
34 eighty days from the date of judgment in a facility certified for one
35 hundred eighty day treatment by the department.

36 (2) If the court or jury finds that grounds set forth in RCW
37 71.05.280 have been proven, but finds that treatment less restrictive
38 than detention will be in the best interest of the person or others,
39 then the court shall remand him or her to the custody of the

1 department or to a facility certified for ninety day treatment by the
2 department or to a less restrictive alternative for a further period
3 of less restrictive treatment not to exceed ninety days from the date
4 of judgment. If the grounds set forth in RCW 71.05.280(3) are the
5 basis of commitment, then the period of treatment may be up to but
6 not exceed one hundred eighty days from the date of judgment. If the
7 court or jury finds that the grounds set forth in RCW 71.05.280(5)
8 have been proven, and provide the only basis for commitment, the
9 court must enter an order for less restrictive alternative treatment
10 for up to ninety days from the date of judgment and may not order
11 inpatient treatment.

12 (3) An order for less restrictive alternative treatment entered
13 under subsection (2) of this section must ~~((identify))~~ name the
14 mental health service provider responsible for identifying the
15 services the person will receive((r)) in accordance with RCW
16 71.05.585, and must include a requirement that the person cooperate
17 with the services planned by the mental health service provider.
18 ~~((The court may order additional evaluation of the person if~~
19 ~~necessary to identify appropriate services.))~~

20 (4) The person shall be released from involuntary treatment at
21 the expiration of the period of commitment imposed under subsection
22 (1) or (2) of this section unless the superintendent or professional
23 person in charge of the facility in which he or she is confined, or
24 in the event of a less restrictive alternative, the designated mental
25 health professional, files a new petition for involuntary treatment
26 on the grounds that the committed person:

27 (a) During the current period of court ordered treatment: (i) Has
28 threatened, attempted, or inflicted physical harm upon the person of
29 another, or substantial damage upon the property of another, and (ii)
30 as a result of mental disorder or developmental disability presents a
31 likelihood of serious harm; or

32 (b) Was taken into custody as a result of conduct in which he or
33 she attempted or inflicted serious physical harm upon the person of
34 another, and continues to present, as a result of mental disorder or
35 developmental disability a likelihood of serious harm; or

36 (c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result
37 of mental disorder or developmental disability continues to present a
38 substantial likelihood of repeating acts similar to the charged
39 criminal behavior, when considering the person's life history,
40 progress in treatment, and the public safety.

1 (ii) In cases under this subsection where the court has made an
2 affirmative special finding under RCW 71.05.280(3)(b), the commitment
3 shall continue for up to an additional one hundred eighty day period
4 whenever the petition presents prima facie evidence that the person
5 continues to suffer from a mental disorder or developmental
6 disability that results in a substantial likelihood of committing
7 acts similar to the charged criminal behavior, unless the person
8 presents proof through an admissible expert opinion that the person's
9 condition has so changed such that the mental disorder or
10 developmental disability no longer presents a substantial likelihood
11 of the person committing acts similar to the charged criminal
12 behavior. The initial or additional commitment period may include
13 transfer to a specialized program of intensive support and treatment,
14 which may be initiated prior to or after discharge from the state
15 hospital; or

16 (d) Continues to be gravely disabled; or

17 (e) Is in need of assisted outpatient mental health treatment.

18 If the conduct required to be proven in (b) and (c) of this
19 subsection was found by a judge or jury in a prior trial under this
20 chapter, it shall not be necessary to prove such conduct again.

21 If less restrictive alternative treatment is sought, the petition
22 shall set forth (~~a proposed plan~~) any recommendations for less
23 restrictive alternative treatment services (~~in accordance with RCW~~
24 ~~71.05.585~~)).

25 (5) A new petition for involuntary treatment filed under
26 subsection (4) of this section shall be filed and heard in the
27 superior court of the county of the facility which is filing the new
28 petition for involuntary treatment unless good cause is shown for a
29 change of venue. The cost of the proceedings shall be borne by the
30 state.

31 (6)(a) The hearing shall be held as provided in RCW 71.05.310,
32 and if the court or jury finds that the grounds for additional
33 confinement as set forth in this section are present, the court may
34 order the committed person returned for an additional period of
35 treatment not to exceed one hundred eighty days from the date of
36 judgment, except as provided in subsection (7) of this section. If
37 the court's order is based solely on the grounds identified in
38 subsection (4)(e) of this section, the court may enter an order for
39 less restrictive alternative treatment not to exceed one hundred
40 eighty days from the date of judgment, and may not enter an order for

1 inpatient treatment. An order for less restrictive alternative
2 treatment must ~~((identify))~~ name the mental health service provider
3 responsible for identifying the services the person will receive~~((7))~~
4 in accordance with RCW 71.05.585, and must include a requirement that
5 the person cooperate with the services planned by the mental health
6 service provider. ~~((The court may order additional evaluation of the~~
7 ~~person if necessary to identify appropriate services.))~~

8 (b) At the end of the one hundred eighty day period of
9 commitment, or one-year period of commitment if subsection (7) of
10 this section applies, the committed person shall be released unless a
11 petition for an additional one hundred eighty day period of continued
12 treatment is filed and heard in the same manner as provided in this
13 section. Successive one hundred eighty day commitments are
14 permissible on the same grounds and pursuant to the same procedures
15 as the original one hundred eighty day commitment.

16 (7) An order for less restrictive treatment entered under
17 subsection (6) of this section may be for up to one year when the
18 person's previous commitment term was for intensive inpatient
19 treatment in a state hospital.

20 (8) No person committed as provided in this section may be
21 detained unless a valid order of commitment is in effect. No order of
22 commitment can exceed one hundred eighty days in length except as
23 provided in subsection (7) of this section.

24 **Sec. 5.** RCW 71.05.585 and 2015 c 250 s 16 are each amended to
25 read as follows:

26 (1) Less restrictive alternative treatment, at a minimum,
27 includes the following services:

- 28 (a) Assignment of a care coordinator;
- 29 (b) An intake evaluation with the provider of the less
30 restrictive alternative treatment;
- 31 (c) A psychiatric evaluation;
- 32 (d) Medication management;
- 33 (e) A schedule of regular contacts with the provider of the less
34 restrictive alternative treatment services for the duration of the
35 order;
- 36 (f) A transition plan addressing access to continued services at
37 the expiration of the order; and
- 38 (g) An individual crisis plan.

1 (2) Less restrictive alternative treatment may additionally
2 include requirements to participate in the following services:

3 (a) Psychotherapy;

4 (b) Nursing;

5 (c) Substance abuse counseling;

6 (d) Residential treatment; and

7 (e) Support for housing, benefits, education, and employment.

8 (3) Less restrictive alternative treatment must be administered
9 by a provider that is certified or licensed to provide or coordinate
10 the full scope of services required under the less restrictive
11 alternative order and that has agreed to assume this responsibility.

12 (4) The care coordinator assigned to a person ordered to less
13 restrictive alternative treatment must submit an individualized plan
14 for the person's treatment services to the court that entered the
15 order. An initial plan must be submitted as soon as possible
16 following the intake evaluation and a revised plan must be submitted
17 upon any subsequent modification in which a type of service is
18 removed from or added to the treatment plan.

19 (5) For the purpose of this section, "care coordinator" means a
20 clinical practitioner who coordinates the activities of less
21 restrictive alternative treatment. The care coordinator coordinates
22 activities with the designated mental health professionals necessary
23 for enforcement and continuation of less restrictive alternative
24 orders and is responsible for coordinating service activities with
25 other agencies and establishing and maintaining a therapeutic
26 relationship with the individual on a continuing basis.

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