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**SUBSTITUTE HOUSE BILL 2289**

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

**By** House Judiciary (originally sponsored by Representatives Kilduff, Muri, Jinkins, Fey, Sawyer, and Gregerson)

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, 71.05.330, 71.05.335, 71.05.340, 71.05.340, and 10.77.270; adding new sections 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)(a) 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 of the county in which the criminal charges against the committed person were dismissed, 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. Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, the prosecuting attorney shall be entitled to intervene.

(b) Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, notice of a decision not to file a new petition for involuntary treatment shall be provided to the sheriff of the county in which the criminal charges against the committed person were dismissed, as well as to the sheriff in the county and the chief of police in the city, if any, in which the person will reside. 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)(a) 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 of the county in which the criminal charges against the committed person were dismissed, 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. Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, the prosecuting attorney shall be entitled to intervene.

(b) Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, notice of a decision not to file a new petition for involuntary treatment shall be provided to the sheriff of the county in which the criminal charges against the committed person were dismissed, as well as to the sheriff in the county and the chief of police in the city, if any, in which the person will reside. 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 71.05.330 and 1998 c 297 s 20 are each amended to read as follows:

(1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2)(a) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320((~~(2)~~)) (4)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, 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 is to be released. 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 attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have 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 shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(b) Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, notice of early release shall be provided to the sheriff of the county in which the criminal charges against the committed person were dismissed, as well as to the sheriff in the county and the chief of police in the city, if any, in which the person will reside. Notice shall be provided at least thirty days before the release date.

**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 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. 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) Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, notice of intent to modify the commitment order shall be provided to the sheriff of the county in which the criminal charges against the committed person were dismissed, as well as to the sheriff in the county and the chief of police in the city, if any, in which the person will reside.

**Sec.**  RCW 71.05.340 and 2015 c 250 s 12 are each amended to read as follows:

(1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the facility or agency designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b)(i) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(4)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. 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 attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have 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 shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(ii) Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, notice of a decision to conditionally release the person shall be provided to the sheriff of the county in which the criminal charges against the committed person were dismissed, as well as to the sheriff in the county and the chief of police in the city, if any, in which the person will reside. Notice of conditional release shall be provided at least thirty days before the person is released from inpatient care.

(2) The facility or agency designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions. Enforcement or revocation proceedings related to a conditional release order may occur as provided under RCW 71.05.590.

**Sec.**  RCW 71.05.340 and 2016 sp.s. c 29 s 240 are each amended to read as follows:

(1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the facility or agency designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the designated crisis responder in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b)(i) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(4)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. 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 attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have 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 shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(ii) Where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, notice of a decision to conditionally release the person shall be provided to the sheriff of the county in which the criminal charges against the committed person were dismissed, as well as to the sheriff in the county and the chief of police in the city, if any, in which the person will reside. Notice of conditional release shall be provided at least thirty days before the person is released from inpatient care.

(2) The facility or agency designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions. Enforcement or revocation proceedings related to a conditional release order may occur as provided under RCW 71.05.590.

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

(1)(a) In cases where the court has made an affirmative special finding under RCW 71.05.280(3)(b) or an affirmative finding under section 9 of this act, at the earliest possible date, and no later than twenty days following notification pursuant to RCW 71.05.325, 71.05.330, 71.05.335, or 71.05.340, the prosecuting attorney shall provide written notification to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney and the guardian or conservator of the committed person, if any, and law enforcement, of a decision not to intervene.

(b) The prosecuting attorney shall also provide written notification to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney and the guardian or conservator of the committed person, if any, and law enforcement, 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.

(2) The law enforcement entities entitled to notification under 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 9 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 9 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) Before the final release, early release, conditional release, or modification of a court order of a person who was committed prior to July 28, 2013, under grounds set forth in RCW 71.05.280(3) where the charge underlying the finding of incompetency is for a felony classified as violent under RCW 9.94A.030, the prosecuting attorney may petition the court to enter an affirmative finding for purposes of determining whether changes in commitment must 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 at the earliest possible date, and no later than seven days following notification pursuant to RCW 71.05.325, 71.05.330, 71.05.335, or 71.05.340. The petition shall be filed and heard in the court of the county of the facility 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 shall have 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 person was committed under grounds set forth in RCW 71.05.280(3) prior to July 28, 2013; (b) whether the charge underlying the finding of incompetence is for a felony classified as violent under RCW 9.94A.030; 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 and 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 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 must review and make recommendations on the release or modification decision within seven days. Final release, early release, conditional release, or modification of a court order 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.**  Sections 1 and 5 of this act expire April 1, 2018.

NEW SECTION. **Sec.**  Sections 2 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2018.

NEW SECTION. **Sec.**  Except for sections 2 and 6 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 take effect immediately.

**--- END ---**