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**SENATE BILL 5580**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senator O'Ban; by request of Department of Social and Health Services

AN ACT Relating to integrating the treatment systems for mental health and substance use disorders; amending RCW 70.96A.140; creating a new section; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec.**  (1) The legislature finds that designated chemical dependency specialists currently have the authority to sign an initial substance use disorder involuntary treatment petition. The initial petition is required to have an accompanying certificate from a physician in support of the petition unless the person waives the physician examination.

(2) The legislature further finds that Engrossed Third Substitute House Bill No. 1713, which passed in the first special session of 2016, directed the department of social and health services to integrate substance use disorder involuntary treatment and mental health involuntary treatment provisions. During the interim period between June 28, 2016 and April 1, 2018, however, that law does not recognize a designated chemical dependency specialist as one of the qualified examining professionals authorized to sign an initial fourteen-day substance use disorder detention petition. That law, however, does recognize a designated chemical dependency specialist as a qualified examining professional for signing ninety-day substance use disorder detention petitions.

(3) Accordingly, the intent of this act is to correct this technical oversight by recognizing a designated chemical dependency specialist as one of the qualified examining professionals authorized to sign an initial fourteen-day substance use disorder detention petition during the interim period between June 28, 2016 and April 1, 2018.

**Sec.**  RCW 70.96A.140 and 2016 sp.s. c 29 s 102 are each amended to read as follows:

(1)(a) When a designated chemical dependency specialist receives information alleging that a person presents a likelihood of serious harm or is gravely disabled as a result of ((~~chemical dependency~~)) a substance use disorder, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court, district court, or in another court permitted by court rule.

If a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to either a designated mental health professional or an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020.

(b) If placement in a ((~~chemical dependency~~)) substance use disorder treatment program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and presents a likelihood of serious harm or is gravely disabled by alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for withdrawal management, sobering services, or ((~~chemical dependency~~)) substance use disorder treatment pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more sustained treatment program, or that the person is chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment.

(c) If involuntary detention is sought, the petition must state facts that support a finding of the grounds identified in (b) of this subsection and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition must state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition must state facts that support a finding of the grounds for commitment identified in (b) of this subsection and set forth the proposed less restrictive alternative.

(d)(i) The petition must be signed by:

(A) Two physicians;

(B) One physician and a mental health professional or designated chemical dependency specialist;

(C) One physician assistant and a mental health professional or designated chemical dependency specialist; or

(D) One psychiatric advanced registered nurse practitioner and a mental health professional or designated chemical dependency specialist.

(ii) The persons signing the petition must have examined the person.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or 71.34.710, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the designated chemical dependency specialist on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony including, if possible, the testimony, which may be telephonic, of at least one licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, ((~~or~~)) mental health professional, or designated chemical dependency specialist who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is chemically dependent shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, ((~~or~~)) mental health professional, or designated chemical dependency specialist, he or she shall be given an opportunity to be examined by a court appointed licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, mental health professional, or designated chemical dependency specialist, or other professional person qualified to provide such services. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4)(a) If, after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by a preponderance of the evidence and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interest of the person or others, it shall make an order of commitment to an approved substance use disorder treatment program. It shall not order commitment of a person unless it determines that an approved substance use disorder treatment program is available and able to provide adequate and appropriate treatment for him or her.

(b) If the court finds that the grounds for commitment have been established by a preponderance of the evidence, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment. The less restrictive order may impose treatment conditions and other conditions that are in the best interest of the respondent and others. A copy of the less restrictive order must be given to the respondent, the designated chemical dependency specialist, and any program designated to provide less restrictive treatment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. The court may not order commitment of a person to a less restrictive course of treatment unless it determines that an approved substance use disorder treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed to inpatient treatment under this section shall remain in the program for treatment for a period of fourteen days unless sooner discharged. A person committed to a less restrictive course of treatment under this section shall remain in the program of treatment for a period of ninety days unless sooner discharged. At the end of the fourteen-day period, or ninety-day period in the case of a less restrictive alternative to inpatient treatment, he or she shall be discharged automatically unless the program or the designated chemical dependency specialist, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days of inpatient treatment or ninety days of less restrictive alternative treatment unless sooner discharged. The petition for ninety-day inpatient or less restrictive alternative treatment must be filed with the clerk of the court at least three days before expiration of the fourteen-day period of intensive treatment.

If a petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she is chemically dependent and likely to inflict physical harm on another, the program or designated chemical dependency specialist shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsections (3) and (4) of this section, except that the burden of proof upon a hearing for recommitment must be proof by clear, cogent, and convincing evidence.

(7) The approved substance use disorder treatment program shall provide for adequate and appropriate treatment of a person committed to its custody on an inpatient or outpatient basis. A person committed under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of a chemically dependent person committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, mental health professional, designated chemical dependency specialist, or other professional person of his or her choice who is qualified to provide such services. If the person is unable to obtain a qualified person and requests an examination, the court shall employ a licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, mental health professional, designated chemical dependency specialist, or other professional person to conduct an examination and testify on behalf of the person.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary inpatient treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. The grounds and procedures for revocation of less restrictive alternative treatment ordered by the court must be the same as those set forth in this section for less restrictive care arranged by an approved substance use disorder treatment program as a condition for early release.

NEW SECTION. **Sec.**  Section 2 of this act expires April 1, 2018.

NEW SECTION. **Sec.**  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 takes effect immediately.

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