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HOUSE BILL 1069

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Jenkins, Appleton, Kirby, Fey, and Cody

Prefiled 01/06/17. Read first time 01/09/17. Referred to Committee on Judiciary.

1 AN ACT Relating to procedures for enforcing outpatient civil  
2 commitment orders; amending RCW 71.05.590, 71.05.590, and 71.05.590;  
3 providing effective dates; and providing expiration dates.

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

5 **Sec. 1.** RCW 71.05.590 and 2015 c 250 s 13 are each amended to  
6 read as follows:

7 (1) An agency or facility designated to monitor or provide  
8 services under a less restrictive alternative or conditional release  
9 order or a designated mental health professional may take action to  
10 enforce, modify, or revoke a less restrictive alternative or  
11 conditional release order if the agency, facility, or designated  
12 mental health professional determines that:

13 (a) The person is failing to adhere to the terms and conditions  
14 of the court order;

15 (b) Substantial deterioration in the person's functioning has  
16 occurred;

17 (c) There is evidence of substantial decompensation with a  
18 reasonable probability that the decompensation can be reversed by  
19 further evaluation, intervention, or treatment; or

20 (d) The person poses a likelihood of serious harm.

1 (2) Actions taken under this section must include a flexible  
2 range of responses of varying levels of intensity appropriate to the  
3 circumstances and consistent with the interests of the individual and  
4 the public in personal autonomy, safety, recovery, and compliance.  
5 Available actions may include, but are not limited to, any of the  
6 following:

7 (a) To counsel(~~(7)~~) or advise(~~(7, or admonish)~~) the person as to  
8 their rights and responsibilities under the court order, and to offer  
9 appropriate incentives to motivate compliance;

10 (b) To increase the intensity of outpatient services provided to  
11 the person by increasing the frequency of contacts with the provider,  
12 referring the person for an assessment for assertive community  
13 services, or by other means;

14 ~~(c) ((To request a court hearing for review and modification of  
15 the court order. The request must be made to the court with  
16 jurisdiction over the order and specify the circumstances that give  
17 rise to the request and what modification is being sought. The county  
18 prosecutor shall assist the agency or facility in requesting this  
19 hearing and issuing an appropriate summons to the person. This  
20 subsection does not limit the inherent authority of a treatment  
21 provider to alter conditions of treatment for clinical reasons, and  
22 is intended to be used only when court intervention is necessary or  
23 advisable to secure the person's compliance and prevent  
24 decompensation or deterioration;~~

25 ~~(d))~~ To cause the person to be transported by a peace officer,  
26 designated mental health professional, or other means to the agency  
27 or facility monitoring or providing services under the court order,  
28 or to a triage facility, crisis stabilization unit, emergency  
29 department, or evaluation and treatment facility for up to twelve  
30 hours for the purpose of an evaluation to determine whether  
31 modification, revocation, or commitment proceedings are necessary and  
32 appropriate to stabilize the person and prevent decompensation,  
33 deterioration, or physical harm. Temporary detention for evaluation  
34 under this subsection is intended to occur only following a pattern  
35 of noncompliance or the failure of reasonable attempts at outreach  
36 and engagement, and may occur only when in the clinical judgment of a  
37 designated mental health professional or the professional person in  
38 charge of an agency or facility designated to monitor less  
39 restrictive alternative services temporary detention is appropriate.  
40 This subsection does not limit the ability or obligation to pursue

1 revocation procedures under (~~subsection (4) of~~) this section in  
2 appropriate circumstances; and

3 ~~((e))~~ (d) To initiate revocation procedures under (~~subsection~~  
4 ~~(4) of~~) this section. This subsection does not limit the inherent  
5 authority of a treatment provider to alter conditions of treatment  
6 for clinical reasons, and is intended to be used only when court  
7 intervention is necessary or advisable to secure the person's  
8 compliance and prevent decompensation or deterioration.

9 (3) The facility or agency designated to provide outpatient  
10 treatment shall notify the secretary or designated mental health  
11 professional when a person fails to adhere to terms and conditions of  
12 court ordered treatment or experiences substantial deterioration in  
13 his or her condition and, as a result, presents an increased  
14 likelihood of serious harm.

15 (4)(a) A designated mental health professional or the secretary  
16 may upon their own motion or notification by the facility or agency  
17 designated to provide outpatient care order a person subject to a  
18 court order under this section to be apprehended and taken into  
19 custody and temporary detention in an evaluation and treatment  
20 facility in or near the county in which he or she is receiving  
21 outpatient treatment, or initiate proceedings under (~~this~~)  
22 subsection (~~(4)~~) (5) of this section without ordering the  
23 apprehension and detention of the person.

24 (b) A person detained under this subsection (4) must be held  
25 until such time, not exceeding five days, as a hearing can be  
26 scheduled to determine whether or not the person should be returned  
27 to the hospital or facility from which he or she had been released.  
28 If the person is not detained, the hearing must be scheduled within  
29 five days of service on the person. The designated mental health  
30 professional or the secretary may modify or rescind the order at any  
31 time prior to commencement of the court hearing.

32 (c) The designated mental health professional or secretary shall  
33 notify the court that originally ordered commitment within two  
34 judicial days of a person's detention (~~and~~).

35 (5)(a) A designated mental health professional or the secretary  
36 must file a petition for revocation (~~petition~~) or modification and  
37 an order of apprehension and detention, if applicable, with the court  
38 that originally ordered commitment or the court in the county in  
39 which the person is located and serve the person and their attorney,  
40 guardian, and conservator, if any. The person has the same rights

1 with respect to notice, hearing, and counsel as in any involuntary  
2 treatment proceeding, except as specifically set forth in this  
3 section. There is no right to jury trial. The venue for proceedings  
4 regarding a petition for modification or revocation must be in the  
5 county in which the petition was filed.

6 ~~((d))~~ (b) The issues for the court to determine are whether:  
7 (i) The person adhered to the terms and conditions of the court  
8 order; (ii) substantial deterioration in the person's functioning has  
9 occurred; (iii) there is evidence of substantial decompensation with  
10 a reasonable probability that the decompensation can be reversed by  
11 further inpatient treatment; or (iv) there is a likelihood of serious  
12 harm; and, if any of the above conditions apply, whether the court  
13 should reinstate or modify the person's less restrictive alternative  
14 or conditional release order or order the person's detention for  
15 inpatient treatment. The person may waive the court hearing and allow  
16 the court to enter a stipulated order upon the agreement of all  
17 parties. If the court orders detention for inpatient treatment, the  
18 treatment period may be for no longer than the period authorized in  
19 the original court order.

20 ~~((e))~~ (c) Revocation proceedings under this subsection ~~((4))~~  
21 (5) are not allowable if the current commitment is solely based on  
22 the person being in need of assisted outpatient mental health  
23 treatment. In order to obtain a court order for detention for  
24 inpatient treatment under this circumstance, a petition must be filed  
25 under RCW 71.05.150 or 71.05.153.

26 ~~((5))~~ (6) In determining whether or not to take action under  
27 this section the designated mental health professional, agency, or  
28 facility must consider the factors specified under RCW 71.05.212 and  
29 the court must consider the factors specified under RCW 71.05.245 as  
30 they apply to the question of whether to enforce, modify, or revoke a  
31 court order for involuntary treatment.

32 **Sec. 2.** RCW 71.05.590 and 2016 sp.s. c 29 s 242 are each amended  
33 to read as follows:

34 (1) An agency or facility designated to monitor or provide  
35 services under a less restrictive alternative or conditional release  
36 order or a designated crisis responder may take action to enforce,  
37 modify, or revoke a less restrictive alternative or conditional  
38 release order if the agency, facility, or designated crisis responder  
39 determines that:

1 (a) The person is failing to adhere to the terms and conditions  
2 of the court order;

3 (b) Substantial deterioration in the person's functioning has  
4 occurred;

5 (c) There is evidence of substantial decompensation with a  
6 reasonable probability that the decompensation can be reversed by  
7 further evaluation, intervention, or treatment; or

8 (d) The person poses a likelihood of serious harm.

9 (2) Actions taken under this section must include a flexible  
10 range of responses of varying levels of intensity appropriate to the  
11 circumstances and consistent with the interests of the individual and  
12 the public in personal autonomy, safety, recovery, and compliance.  
13 Available actions may include, but are not limited to, any of the  
14 following:

15 (a) To counsel(~~(7)~~) or advise(~~(7, or admonish)~~) the person as to  
16 their rights and responsibilities under the court order, and to offer  
17 appropriate incentives to motivate compliance;

18 (b) To increase the intensity of outpatient services provided to  
19 the person by increasing the frequency of contacts with the provider,  
20 referring the person for an assessment for assertive community  
21 services, or by other means;

22 ~~(c) ((To request a court hearing for review and modification of  
23 the court order. The request must be made to the court with  
24 jurisdiction over the order and specify the circumstances that give  
25 rise to the request and what modification is being sought. The county  
26 prosecutor shall assist the agency or facility in requesting this  
27 hearing and issuing an appropriate summons to the person. This  
28 subsection does not limit the inherent authority of a treatment  
29 provider to alter conditions of treatment for clinical reasons, and  
30 is intended to be used only when court intervention is necessary or  
31 advisable to secure the person's compliance and prevent  
32 decompensation or deterioration;~~

33 ~~(d))~~ To cause the person to be transported by a peace officer,  
34 designated crisis responder, or other means to the agency or facility  
35 monitoring or providing services under the court order, or to a  
36 triage facility, crisis stabilization unit, emergency department, or  
37 to an evaluation and treatment facility if the person is committed  
38 for mental health treatment, or to a secure detoxification facility  
39 with available space or an approved substance use disorder treatment  
40 program with available space if the person is committed for substance

1 use disorder treatment. The person may be detained at the facility  
2 for up to twelve hours for the purpose of an evaluation to determine  
3 whether modification, revocation, or commitment proceedings are  
4 necessary and appropriate to stabilize the person and prevent  
5 decompensation, deterioration, or physical harm. Temporary detention  
6 for evaluation under this subsection is intended to occur only  
7 following a pattern of noncompliance or the failure of reasonable  
8 attempts at outreach and engagement, and may occur only when in the  
9 clinical judgment of a designated crisis responder or the  
10 professional person in charge of an agency or facility designated to  
11 monitor less restrictive alternative services temporary detention is  
12 appropriate. This subsection does not limit the ability or obligation  
13 to pursue revocation procedures under ~~((subsection (4) of))~~ this  
14 section in appropriate circumstances; and

15 ~~((e))~~ (d) To initiate revocation procedures under ~~((subsection~~  
16 ~~(4) of))~~ this section. This subsection does not limit the inherent  
17 authority of a treatment provider to alter conditions of treatment  
18 for clinical reasons, and is intended to be used only when court  
19 intervention is necessary or advisable to secure the person's  
20 compliance and prevent decompensation or deterioration.

21 (3) The facility or agency designated to provide outpatient  
22 treatment shall notify the secretary or designated crisis responder  
23 when a person fails to adhere to terms and conditions of court  
24 ordered treatment or experiences substantial deterioration in his or  
25 her condition and, as a result, presents an increased likelihood of  
26 serious harm.

27 (4)(a) A designated crisis responder or the secretary may upon  
28 their own motion or notification by the facility or agency designated  
29 to provide outpatient care order a person subject to a court order  
30 under this chapter to be apprehended and taken into custody and  
31 temporary detention in an evaluation and treatment facility in or  
32 near the county in which he or she is receiving outpatient treatment  
33 if the person is committed for mental health treatment, or, if the  
34 person is committed for substance use disorder treatment, in a secure  
35 detoxification facility or approved substance use disorder treatment  
36 program if either is available in or near the county in which he or  
37 she is receiving outpatient treatment and has adequate space.  
38 Proceedings under ~~((this))~~ subsection ~~((4))~~ (5) of this section may  
39 be initiated without ordering the apprehension and detention of the  
40 person.

1 (b) A person detained under this subsection (4) must be held  
2 until such time, not exceeding five days, as a hearing can be  
3 scheduled to determine whether or not the person should be returned  
4 to the hospital or facility from which he or she had been released.  
5 If the person is not detained, the hearing must be scheduled within  
6 five days of service on the person. The designated crisis responder  
7 or the secretary may modify or rescind the order at any time prior to  
8 commencement of the court hearing.

9 (c) The designated crisis responder or secretary shall notify the  
10 court that originally ordered commitment within two judicial days of  
11 a person's detention (~~(and)~~).

12 (5)(a) A designated mental health professional or the secretary  
13 must file a petition for revocation (~~(petition)~~) or modification and  
14 an order of apprehension and detention, if applicable, with the court  
15 that originally ordered commitment or the court in the county in  
16 which the person is located and serve the person and their attorney,  
17 guardian, and conservator, if any. The person has the same rights  
18 with respect to notice, hearing, and counsel as in any involuntary  
19 treatment proceeding, except as specifically set forth in this  
20 section. There is no right to jury trial. The venue for proceedings  
21 regarding a petition for modification or revocation must be in the  
22 county in which the petition was filed.

23 (~~(d)~~) (b) The issues for the court to determine are whether:  
24 (i) The person adhered to the terms and conditions of the court  
25 order; (ii) substantial deterioration in the person's functioning has  
26 occurred; (iii) there is evidence of substantial decompensation with  
27 a reasonable probability that the decompensation can be reversed by  
28 further inpatient treatment; or (iv) there is a likelihood of serious  
29 harm; and, if any of the above conditions apply, whether the court  
30 should reinstate or modify the person's less restrictive alternative  
31 or conditional release order or order the person's detention for  
32 inpatient treatment. The person may waive the court hearing and allow  
33 the court to enter a stipulated order upon the agreement of all  
34 parties. If the court orders detention for inpatient treatment, the  
35 treatment period may be for no longer than the period authorized in  
36 the original court order. A court may not issue an order to detain a  
37 person for inpatient treatment in a secure detoxification facility or  
38 approved substance use disorder treatment program under this  
39 subsection unless there is a secure detoxification facility or

1 approved substance use disorder treatment program available and with  
2 adequate space for the person.

3 ~~((e))~~ (c) Revocation proceedings under this subsection ~~((4))~~  
4 (5) are not allowable if the current commitment is solely based on  
5 the person being in need of assisted outpatient mental health  
6 treatment. In order to obtain a court order for detention for  
7 inpatient treatment under this circumstance, a petition must be filed  
8 under RCW 71.05.150 or 71.05.153.

9 ~~((5))~~ (6) In determining whether or not to take action under  
10 this section the designated crisis responder, agency, or facility  
11 must consider the factors specified under RCW 71.05.212 and the court  
12 must consider the factors specified under RCW 71.05.245 as they apply  
13 to the question of whether to enforce, modify, or revoke a court  
14 order for involuntary treatment.

15 **Sec. 3.** RCW 71.05.590 and 2016 sp.s. c 29 s 243 are each amended  
16 to read as follows:

17 (1) An agency or facility designated to monitor or provide  
18 services under a less restrictive alternative or conditional release  
19 order or a designated crisis responder may take action to enforce,  
20 modify, or revoke a less restrictive alternative or conditional  
21 release order if the agency, facility, or designated crisis responder  
22 determines that:

23 (a) The person is failing to adhere to the terms and conditions  
24 of the court order;

25 (b) Substantial deterioration in the person's functioning has  
26 occurred;

27 (c) There is evidence of substantial decompensation with a  
28 reasonable probability that the decompensation can be reversed by  
29 further evaluation, intervention, or treatment; or

30 (d) The person poses a likelihood of serious harm.

31 (2) Actions taken under this section must include a flexible  
32 range of responses of varying levels of intensity appropriate to the  
33 circumstances and consistent with the interests of the individual and  
34 the public in personal autonomy, safety, recovery, and compliance.  
35 Available actions may include, but are not limited to, any of the  
36 following:

37 (a) To counsel~~((7))~~ or advise~~((7, or admonish))~~ the person as to  
38 their rights and responsibilities under the court order, and to offer  
39 appropriate incentives to motivate compliance;



1 (b) To increase the intensity of outpatient services provided to  
2 the person by increasing the frequency of contacts with the provider,  
3 referring the person for an assessment for assertive community  
4 services, or by other means;

5 ~~(c) ((To request a court hearing for review and modification of  
6 the court order. The request must be made to the court with  
7 jurisdiction over the order and specify the circumstances that give  
8 rise to the request and what modification is being sought. The county  
9 prosecutor shall assist the agency or facility in requesting this  
10 hearing and issuing an appropriate summons to the person. This  
11 subsection does not limit the inherent authority of a treatment  
12 provider to alter conditions of treatment for clinical reasons, and  
13 is intended to be used only when court intervention is necessary or  
14 advisable to secure the person's compliance and prevent  
15 decompensation or deterioration;~~

16 ~~(d))~~ To cause the person to be transported by a peace officer,  
17 designated crisis responder, or other means to the agency or facility  
18 monitoring or providing services under the court order, or to a  
19 triage facility, crisis stabilization unit, emergency department, or  
20 to an evaluation and treatment facility if the person is committed  
21 for mental health treatment, or to a secure detoxification facility  
22 or an approved substance use disorder treatment program if the person  
23 is committed for substance use disorder treatment. The person may be  
24 detained at the facility for up to twelve hours for the purpose of an  
25 evaluation to determine whether modification, revocation, or  
26 commitment proceedings are necessary and appropriate to stabilize the  
27 person and prevent decompensation, deterioration, or physical harm.  
28 Temporary detention for evaluation under this subsection is intended  
29 to occur only following a pattern of noncompliance or the failure of  
30 reasonable attempts at outreach and engagement, and may occur only  
31 when in the clinical judgment of a designated crisis responder or the  
32 professional person in charge of an agency or facility designated to  
33 monitor less restrictive alternative services temporary detention is  
34 appropriate. This subsection does not limit the ability or obligation  
35 to pursue revocation procedures under ~~((subsection (4) of))~~ this  
36 section in appropriate circumstances; and

37 ~~((e))~~ (d) To initiate revocation procedures under ~~((subsection~~  
38 ~~(4) of))~~ this section. This subsection does not limit the inherent  
39 authority of a treatment provider to alter conditions of treatment  
40 for clinical reasons, and is intended to be used only when court

1 intervention is necessary or advisable to secure the person's  
2 compliance and prevent decompensation or deterioration.

3 (3) The facility or agency designated to provide outpatient  
4 treatment shall notify the secretary or designated crisis responder  
5 when a person fails to adhere to terms and conditions of court  
6 ordered treatment or experiences substantial deterioration in his or  
7 her condition and, as a result, presents an increased likelihood of  
8 serious harm.

9 (4)(a) A designated crisis responder or the secretary may upon  
10 their own motion or notification by the facility or agency designated  
11 to provide outpatient care order a person subject to a court order  
12 under this chapter to be apprehended and taken into custody and  
13 temporary detention in an evaluation and treatment facility in or  
14 near the county in which he or she is receiving outpatient treatment  
15 if the person is committed for mental health treatment, or, if the  
16 person is committed for substance use disorder treatment, in a secure  
17 detoxification facility or approved substance use disorder treatment  
18 program if either is available in or near the county in which he or  
19 she is receiving outpatient treatment. Proceedings under (~~this~~)  
20 subsection (~~(4)~~) (5) of this section may be initiated without  
21 ordering the apprehension and detention of the person.

22 (b) A person detained under this subsection (4) must be held  
23 until such time, not exceeding five days, as a hearing can be  
24 scheduled to determine whether or not the person should be returned  
25 to the hospital or facility from which he or she had been released.  
26 If the person is not detained, the hearing must be scheduled within  
27 five days of service on the person. The designated crisis responder  
28 or the secretary may modify or rescind the order at any time prior to  
29 commencement of the court hearing.

30 (c) The designated crisis responder or secretary shall notify the  
31 court that originally ordered commitment within two judicial days of  
32 a person's detention (~~and~~).

33 (5)(a) A designated mental health professional or the secretary  
34 must file a petition for revocation (~~petition~~) or modification and  
35 an order of apprehension and detention, if applicable, with the court  
36 that originally ordered commitment or the court in the county in  
37 which the person is located and serve the person and their attorney,  
38 guardian, and conservator, if any. The person has the same rights  
39 with respect to notice, hearing, and counsel as in any involuntary  
40 treatment proceeding, except as specifically set forth in this

1 section. There is no right to jury trial. The venue for proceedings  
2 regarding a petition for modification or revocation must be in the  
3 county in which the petition was filed.

4 ~~((d))~~ (b) The issues for the court to determine are whether:  
5 (i) The person adhered to the terms and conditions of the court  
6 order; (ii) substantial deterioration in the person's functioning has  
7 occurred; (iii) there is evidence of substantial decompensation with  
8 a reasonable probability that the decompensation can be reversed by  
9 further inpatient treatment; or (iv) there is a likelihood of serious  
10 harm; and, if any of the above conditions apply, whether the court  
11 should reinstate or modify the person's less restrictive alternative  
12 or conditional release order or order the person's detention for  
13 inpatient treatment. The person may waive the court hearing and allow  
14 the court to enter a stipulated order upon the agreement of all  
15 parties. If the court orders detention for inpatient treatment, the  
16 treatment period may be for no longer than the period authorized in  
17 the original court order.

18 ~~((e))~~ (c) Revocation proceedings under this subsection ~~((4))~~  
19 (5) are not allowable if the current commitment is solely based on  
20 the person being in need of assisted outpatient mental health  
21 treatment. In order to obtain a court order for detention for  
22 inpatient treatment under this circumstance, a petition must be filed  
23 under RCW 71.05.150 or 71.05.153.

24 ~~((5))~~ (6) In determining whether or not to take action under  
25 this section the designated crisis responder, agency, or facility  
26 must consider the factors specified under RCW 71.05.212 and the court  
27 must consider the factors specified under RCW 71.05.245 as they apply  
28 to the question of whether to enforce, modify, or revoke a court  
29 order for involuntary treatment.

30 NEW SECTION. **Sec. 4.** Section 1 of this act expires April 1,  
31 2018.

32 NEW SECTION. **Sec. 5.** Section 2 of this act takes effect April  
33 1, 2018.

34 NEW SECTION. **Sec. 6.** Section 2 of this act expires July 1,  
35 2026.

1        NEW SECTION.   **Sec. 7.**   Section 3 of this act takes effect July 1,  
2   2026.

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