
HOUSE BILL 1753

State of Washington

65th Legislature

2017 Regular Session

By Representatives Cody and Jinkins; by request of Department of Social and Health Services

Read first time 01/27/17. Referred to Committee on Judiciary.

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

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

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

12 (2) The legislature further finds that Engrossed Third Substitute
13 House Bill No. 1713, which passed in the first special session of
14 2016, directed the department of social and health services to
15 integrate substance use disorder involuntary treatment and mental
16 health involuntary treatment provisions. During the interim period
17 between June 28, 2016 and April 1, 2018, however, that law does not
18 recognize a designated chemical dependency specialist as one of the
19 qualified examining professionals authorized to sign an initial
20 fourteen-day substance use disorder detention petition. That law,
21 however, does recognize a designated chemical dependency specialist

1 as a qualified examining professional for signing ninety-day
2 substance use disorder detention petitions.

3 (3) Accordingly, the intent of this act is to correct this
4 technical oversight by recognizing a designated chemical dependency
5 specialist as one of the qualified examining professionals authorized
6 to sign an initial fourteen-day substance use disorder detention
7 petition during the interim period between June 28, 2016 and April 1,
8 2018.

9 **Sec. 2.** RCW 70.96A.140 and 2016 sp.s. c 29 s 102 are each
10 amended to read as follows:

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

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

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

30 (b) If placement in a (~~chemical dependency~~) substance use
31 disorder treatment program is available and deemed appropriate, the
32 petition shall allege that: The person is chemically dependent and
33 presents a likelihood of serious harm or is gravely disabled by
34 alcohol or drug addiction, or that the person has twice before in the
35 preceding twelve months been admitted for withdrawal management,
36 sobering services, or (~~chemical dependency~~) substance use disorder
37 treatment pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of
38 a more sustained treatment program, or that the person is chemically
39 dependent and has threatened, attempted, or inflicted physical harm

1 on another and is likely to inflict physical harm on another unless
2 committed. A refusal to undergo treatment, by itself, does not
3 constitute evidence of lack of judgment as to the need for treatment.

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

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

15 (A) Two physicians;

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

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

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

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

25 (2) Upon filing the petition, the court shall fix a date for a
26 hearing no less than two and no more than seven days after the date
27 the petition was filed unless the person petitioned against is
28 presently being detained in a program, pursuant to RCW 70.96A.120,
29 71.05.210, or 71.34.710, in which case the hearing shall be held
30 within seventy-two hours of the filing of the petition: PROVIDED,
31 HOWEVER, That the above specified seventy-two hours shall be computed
32 by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER,
33 That, the court may, upon motion of the person whose commitment is
34 sought, or upon motion of petitioner with written permission of the
35 person whose commitment is sought, or his or her counsel and, upon
36 good cause shown, extend the date for the hearing. A copy of the
37 petition and of the notice of the hearing, including the date fixed
38 by the court, shall be served by the designated chemical dependency
39 specialist on the person whose commitment is sought, his or her next
40 of kin, a parent or his or her legal guardian if he or she is a

1 minor, and any other person the court believes advisable. A copy of
2 the petition and certificate shall be delivered to each person
3 notified.

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

19 The record maker shall not be required to testify in order to
20 introduce medical, nursing, or psychological records of detained
21 persons so long as the requirements of RCW 5.45.020 are met, except
22 that portions of the record that contain opinions as to whether the
23 detained person is chemically dependent shall be deleted from the
24 records unless the person offering the opinions is available for
25 cross-examination. The person shall be present unless the court
26 believes that his or her presence is likely to be injurious to him or
27 her; in this event the court may deem it appropriate to appoint a
28 guardian ad litem to represent him or her throughout the proceeding.
29 If deemed advisable, the court may examine the person out of
30 courtroom. If the person has refused to be examined by a licensed
31 physician, psychiatric advanced registered nurse practitioner,
32 physician assistant, ~~((\otimes))~~ mental health professional, or designated
33 chemical dependency specialist, he or she shall be given an
34 opportunity to be examined by a court appointed licensed physician,
35 psychiatric advanced registered nurse practitioner, physician
36 assistant, mental health professional, or designated chemical
37 dependency specialist, or other professional person qualified to
38 provide such services. If he or she refuses and there is sufficient
39 evidence to believe that the allegations of the petition are true, or
40 if the court believes that more medical evidence is necessary, the

1 court may make a temporary order committing him or her to the
2 department for a period of not more than five days for purposes of a
3 diagnostic examination.

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

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

32 (5) A person committed to inpatient treatment under this section
33 shall remain in the program for treatment for a period of fourteen
34 days unless sooner discharged. A person committed to a less
35 restrictive course of treatment under this section shall remain in
36 the program of treatment for a period of ninety days unless sooner
37 discharged. At the end of the fourteen-day period, or ninety-day
38 period in the case of a less restrictive alternative to inpatient
39 treatment, he or she shall be discharged automatically unless the
40 program or the designated chemical dependency specialist, before

1 expiration of the period, files a petition for his or her
2 recommitment upon the grounds set forth in subsection (1) of this
3 section for a further period of ninety days of inpatient treatment or
4 ninety days of less restrictive alternative treatment unless sooner
5 discharged. The petition for ninety-day inpatient or less restrictive
6 alternative treatment must be filed with the clerk of the court at
7 least three days before expiration of the fourteen-day period of
8 intensive treatment.

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

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

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

36 (7) The approved substance use disorder treatment program shall
37 provide for adequate and appropriate treatment of a person committed
38 to its custody on an inpatient or outpatient basis. A person
39 committed under this section may be transferred from one approved

1 public treatment program to another if transfer is medically
2 advisable.

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

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

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

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

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

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

3 (12) When in the opinion of the professional person in charge of
4 the program providing involuntary inpatient treatment under this
5 chapter, the committed patient can be appropriately served by less
6 restrictive treatment before expiration of the period of commitment,
7 then the less restrictive care may be required as a condition for
8 early release for a period which, when added to the initial treatment
9 period, does not exceed the period of commitment. If the program
10 designated to provide the less restrictive treatment is other than
11 the program providing the initial involuntary treatment, the program
12 so designated must agree in writing to assume such responsibility. A
13 copy of the conditions for early release shall be given to the
14 patient, the designated chemical dependency specialist of original
15 commitment, and the court of original commitment. The program
16 designated to provide less restrictive care may modify the conditions
17 for continued release when the modifications are in the best
18 interests of the patient. If the program providing less restrictive
19 care and the designated chemical dependency specialist determine that
20 a conditionally released patient is failing to adhere to the terms
21 and conditions of his or her release, or that substantial
22 deterioration in the patient's functioning has occurred, then the
23 designated chemical dependency specialist shall notify the court of
24 original commitment and request a hearing to be held no less than two
25 and no more than seven days after the date of the request to
26 determine whether or not the person should be returned to more
27 restrictive care. The designated chemical dependency specialist shall
28 file a petition with the court stating the facts substantiating the
29 need for the hearing along with the treatment recommendations. The
30 patient shall have the same rights with respect to notice, hearing,
31 and counsel as for the original involuntary treatment proceedings.
32 The issues to be determined at the hearing are whether the
33 conditionally released patient did or did not adhere to the terms and
34 conditions of his or her release to less restrictive care or that
35 substantial deterioration of the patient's functioning has occurred
36 and whether the conditions of release should be modified or the
37 person should be returned to a more restrictive program. The hearing
38 may be waived by the patient and his or her counsel and his or her
39 guardian or conservator, if any, but may not be waived unless all
40 such persons agree to the waiver. Upon waiver, the person may be

1 returned for involuntary treatment or continued on conditional
2 release on the same or modified conditions. The grounds and
3 procedures for revocation of less restrictive alternative treatment
4 ordered by the court must be the same as those set forth in this
5 section for less restrictive care arranged by an approved substance
6 use disorder treatment program as a condition for early release.

7 NEW SECTION. **Sec. 3.** Section 2 of this act expires April 1,
8 2018.

9 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of
11 the state government and its existing public institutions, and takes
12 effect immediately.

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