

ESB 5130 - H AMD TO APP COMM AMD (H-1874.2/23) 588
By Representative Cheney

ADOPTED 04/12/2023

1 On page 5, after line 7, insert the following:

2 "Sec. 2. RCW 71.05.240 and 2022 c 210 s 12 are each amended to
3 read as follows:

4 (1) If a petition is filed for up to 14 days of involuntary
5 treatment, 90 days of less restrictive alternative treatment, or 18
6 months of less restrictive alternative treatment under RCW 71.05.148,
7 the court shall hold a probable cause hearing within 120 hours of the
8 initial detention under RCW 71.05.180, or at a time scheduled under
9 RCW 71.05.148.

10 (2) If the petition is for mental health treatment, the court or
11 the prosecutor at the time of the probable cause hearing and before
12 an order of commitment is entered shall inform the person both orally
13 and in writing that the failure to make a good faith effort to seek
14 voluntary treatment as provided in RCW 71.05.230 will result in the
15 loss of his or her firearm rights if the person is subsequently
16 detained for involuntary treatment under this section.

17 (3) If the person or his or her attorney alleges, prior to the
18 commencement of the hearing, that the person has in good faith
19 volunteered for treatment, the petitioner must show, by preponderance
20 of the evidence, that the person has not in good faith volunteered
21 for appropriate treatment. In order to qualify as a good faith
22 volunteer, the person must abide by procedures and a treatment plan
23 as prescribed by a treatment facility and professional staff.

24 (4)(a) Subject to (b) of this subsection, at the conclusion of
25 the probable cause hearing, if the court finds by a preponderance of
26 the evidence that a person detained for behavioral health treatment,
27 as the result of a behavioral health disorder, presents a likelihood
28 of serious harm, or is gravely disabled, and, after considering less
29 restrictive alternatives to involuntary detention and treatment,
30 finds that no such alternatives are in the best interests of such
31 person or others, the court shall order that such person be detained
32 for involuntary treatment not to exceed 14 days in a facility

1 licensed or certified to provide treatment by the department or under
2 RCW 71.05.745.

3 (b) A court may only order commitment to a secure withdrawal
4 management and stabilization facility or approved substance use
5 disorder treatment program if there is an available facility with
6 adequate space for the person.

7 (c) At the conclusion of the probable cause hearing, if the court
8 finds by a preponderance of the evidence that a person detained for
9 behavioral health treatment, as the result of a behavioral health
10 disorder, presents a likelihood of serious harm or is gravely
11 disabled, but that treatment in a less restrictive setting than
12 detention is in the best interest of such person or others, the court
13 shall order an appropriate less restrictive alternative course of
14 treatment for up to ninety days.

15 (d) If the court finds by (~~a preponderance of the~~) clear,
16 cogent, and convincing evidence that a person subject to a petition
17 under RCW 71.05.148, as the result of a behavioral health disorder,
18 is in need of assisted outpatient treatment, the court shall order an
19 appropriate less restrictive alternative course of treatment for up
20 to 18 months.

21 (5) An order for less restrictive alternative treatment must name
22 the behavioral health service provider responsible for identifying
23 the services the person will receive in accordance with RCW
24 71.05.585, and must include a requirement that the person cooperate
25 with the treatment recommendations of the behavioral health service
26 provider.

27 (6) The court shall notify the person orally and in writing that
28 if involuntary treatment is sought beyond the 14-day inpatient or 90-
29 day less restrictive treatment period, the person has the right to a
30 full hearing or jury trial under RCW 71.05.310. If the commitment is
31 for mental health treatment, the court shall notify the person orally
32 and in writing that the person is barred from the possession of
33 firearms and that the prohibition remains in effect until a court
34 restores his or her right to possess a firearm under RCW 9.41.047.

35 (7) If the court does not issue an order to detain or commit a
36 person under this section, the court shall issue an order to dismiss
37 the petition.

38 (8) Nothing in this section precludes the court from subsequently
39 modifying the terms of an order for less restrictive alternative
40 treatment under RCW 71.05.590(3).

1 **Sec. 3.** RCW 71.05.240 and 2022 c 210 s 13 are each amended to
2 read as follows:

3 (1) If a petition is filed for up to 14 days of involuntary
4 treatment, 90 days of less restrictive alternative treatment, or 18
5 months of less restrictive alternative treatment under RCW 71.05.148,
6 the court shall hold a probable cause hearing within 120 hours of the
7 initial detention under RCW 71.05.180, or at a time scheduled under
8 RCW 71.05.148.

9 (2) If the petition is for mental health treatment, the court or
10 the prosecutor at the time of the probable cause hearing and before
11 an order of commitment is entered shall inform the person both orally
12 and in writing that the failure to make a good faith effort to seek
13 voluntary treatment as provided in RCW 71.05.230 will result in the
14 loss of his or her firearm rights if the person is subsequently
15 detained for involuntary treatment under this section.

16 (3) If the person or his or her attorney alleges, prior to the
17 commencement of the hearing, that the person has in good faith
18 volunteered for treatment, the petitioner must show, by preponderance
19 of the evidence, that the person has not in good faith volunteered
20 for appropriate treatment. In order to qualify as a good faith
21 volunteer, the person must abide by procedures and a treatment plan
22 as prescribed by a treatment facility and professional staff.

23 (4)(a) At the conclusion of the probable cause hearing, if the
24 court finds by a preponderance of the evidence that a person detained
25 for behavioral health treatment, as the result of a behavioral health
26 disorder, presents a likelihood of serious harm, or is gravely
27 disabled, and, after considering less restrictive alternatives to
28 involuntary detention and treatment, finds that no such alternatives
29 are in the best interests of such person or others, the court shall
30 order that such person be detained for involuntary treatment not to
31 exceed fourteen days in a facility licensed or certified to provide
32 treatment by the department or under RCW 71.05.745.

33 (b) At the conclusion of the probable cause hearing, if the court
34 finds by a preponderance of the evidence that a person detained for
35 behavioral health treatment, as the result of a behavioral health
36 disorder, presents a likelihood of serious harm or is gravely
37 disabled, but that treatment in a less restrictive setting than
38 detention is in the best interest of such person or others, the court
39 shall order an appropriate less restrictive alternative course of
40 treatment for up to ninety days.

1 (c) If the court finds by (~~a preponderance of the~~) clear,
2 cogent, and convincing evidence that a person subject to a petition
3 under RCW 71.05.148, as the result of a behavioral health disorder,
4 is in need of assisted outpatient treatment, the court shall order an
5 appropriate less restrictive alternative course of treatment for up
6 to 18 months.

7 (5) An order for less restrictive alternative treatment must name
8 the behavioral health service provider responsible for identifying
9 the services the person will receive in accordance with RCW
10 71.05.585, and must include a requirement that the person cooperate
11 with the treatment recommendations of the behavioral health service
12 provider.

13 (6) The court shall notify the person orally and in writing that
14 if involuntary treatment is sought beyond the 14-day inpatient or 90-
15 day less restrictive treatment period, such person has the right to a
16 full hearing or jury trial under RCW 71.05.310. If the commitment is
17 for mental health treatment, the court shall also notify the person
18 orally and in writing that the person is barred from the possession
19 of firearms and that the prohibition remains in effect until a court
20 restores his or her right to possess a firearm under RCW 9.41.047.

21 (7) If the court does not issue an order to detain or commit a
22 person under this section, the court shall issue an order to dismiss
23 the petition.

24 (8) Nothing in this section precludes the court from subsequently
25 modifying the terms of an order for less restrictive alternative
26 treatment under RCW 71.05.590(3)."

27 Renumber the remaining sections consecutively, correct any
28 internal references accordingly, and correct the title.

29 On page 43, line 36, after "Sections" insert "2,"

30 On page 44, line 1, after "Sections" insert "3,"

EFFECT: Amends a provision that governs procedures for
adjudicating a petition for assisted outpatient treatment to provide
that the standard of proof is clear, cogent, and convincing evidence.

--- END ---