

**ESHB 1349** - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 04/13/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that many persons  
4 who are released from involuntary mental health treatment in an  
5 inpatient setting would benefit from an order for less restrictive  
6 treatment in order to provide the structure and support necessary to  
7 facilitate long-term stability and success in the community.

8 (2) The legislature intends to make it easier to renew orders for  
9 less restrictive treatment following a period of inpatient commitment  
10 in cases in which a person has been involuntarily committed more than  
11 once and is likely to benefit from a renewed order for less restrictive  
12 treatment.

13 (3) The legislature finds that public safety is enhanced when a  
14 designated mental health professional is able to file a petition to  
15 revoke an order for less restrictive treatment under RCW 71.05.340  
16 before a person who is the subject of the petition becomes ill enough  
17 to present a likelihood of serious harm.

18 **Sec. 2.** RCW 71.05.320 and 2008 c 213 s 9 are each amended to read  
19 as follows:

20 (1) If the court or jury finds that grounds set forth in RCW  
21 71.05.280 have been proven and that the best interests of the person or  
22 others will not be served by a less restrictive treatment which is an  
23 alternative to detention, the court shall remand him or her to the  
24 custody of the department or to a facility certified for ninety day  
25 treatment by the department for a further period of intensive treatment  
26 not to exceed ninety days from the date of judgment(~~(+—PROVIDED, That~~  
27 ~~(a+))~~). If the grounds set forth in RCW 71.05.280(3) are the basis of  
28 commitment, then the period of treatment may be up to but not exceed

1 one hundred eighty days from the date of judgment in a facility  
2 certified for one hundred eighty day treatment by the department.

3 ~~((b) If the committed person has a developmental disability and  
4 has been determined incompetent pursuant to RCW 10.77.086(4), and the  
5 best interests of the person or others will not be served by a less-  
6 restrictive treatment which is an alternative to detention, the court  
7 shall remand him or her to the custody of the department or to a  
8 facility certified for one hundred eighty day treatment by the  
9 department. When appropriate and subject to available funds, treatment  
10 and training of such persons must be provided in a program specifically  
11 reserved for the treatment and training of persons with developmental  
12 disabilities. A person so committed shall receive habilitation  
13 services pursuant to an individualized service plan specifically  
14 developed to treat the behavior which was the subject of the criminal  
15 proceedings. The treatment program shall be administered by  
16 developmental disabilities professionals and others trained  
17 specifically in the needs of persons with developmental disabilities.  
18 The department may limit admissions to this specialized program in  
19 order to ensure that expenditures for services do not exceed amounts  
20 appropriated by the legislature and allocated by the department for  
21 such services. The department may establish admission priorities in  
22 the event that the number of eligible persons exceeds the limits set by  
23 the department. An order for treatment less restrictive than  
24 involuntary detention may include conditions, and if such conditions  
25 are not adhered to, the designated mental health professional or  
26 developmental disabilities professional may order the person  
27 apprehended under the terms and conditions of RCW 71.05.340.))~~

28 (2) If the court or jury finds that grounds set forth in RCW  
29 71.05.280 have been proven, but finds that treatment less restrictive  
30 than detention will be in the best interest of the person or others,  
31 then the court shall remand him or her to the custody of the department  
32 or to a facility certified for ninety day treatment by the department  
33 or to a less restrictive alternative for a further period of less  
34 restrictive treatment not to exceed ninety days from the date of  
35 judgment(~~(:—PROVIDED, That)~~). If the grounds set forth in RCW  
36 71.05.280(3) are the basis of commitment, then the period of treatment  
37 may be up to but not exceed one hundred eighty days from the date of  
38 judgment.

1 (3) The person shall be released from involuntary treatment at the  
2 expiration of the period of commitment imposed under subsection (1) or  
3 (2) of this section unless the superintendent or professional person in  
4 charge of the facility in which he or she is confined, or in the event  
5 of a less restrictive alternative, the designated mental health  
6 professional (~~(or developmental disabilities professional)~~), files a  
7 new petition for involuntary treatment on the grounds that the  
8 committed person(~~(+)~~):

9 (a) During the current period of court ordered treatment: (i) Has  
10 threatened, attempted, or inflicted physical harm upon the person of  
11 another, or substantial damage upon the property of another, and (ii)  
12 as a result of mental disorder or developmental disability presents a  
13 likelihood of serious harm; or

14 (b) Was taken into custody as a result of conduct in which he or  
15 she attempted or inflicted serious physical harm upon the person of  
16 another, and continues to present, as a result of mental disorder or  
17 developmental disability a likelihood of serious harm; or

18 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of  
19 mental disorder or developmental disability presents a substantial  
20 likelihood of repeating similar acts considering the charged criminal  
21 behavior, life history, progress in treatment, and the public safety;  
22 or

23 (d) Continues to be gravely disabled.

24 If the conduct required to be proven in (b) and (c) of this  
25 subsection was found by a judge or jury in a prior trial under this  
26 chapter, it shall not be necessary to (~~(reprove that element)~~) prove  
27 such conduct again. (~~(Such)~~)

28 (4) For a person committed under subsection (2) of this section who  
29 has been remanded to a period of less restrictive treatment, in  
30 addition to the grounds specified in subsection (3) of this section,  
31 the designated mental health professional may file a new petition for  
32 continued less restrictive treatment if:

33 (a) The person was previously committed by a court to detention for  
34 involuntary mental health treatment during the thirty-six months that  
35 preceded the person's initial detention date during the current  
36 involuntary commitment cycle, excluding any time spent in a mental  
37 health facility or in confinement as a result of a criminal conviction;

1 (b) In view of the person's treatment history or current behavior,  
2 the person is unlikely to voluntarily participate in outpatient  
3 treatment without an order for less restrictive treatment; and

4 (c) Outpatient treatment that would be provided under a less  
5 restrictive treatment order is necessary to prevent a relapse,  
6 decompensation, or deterioration that is likely to result in the person  
7 presenting a likelihood of serious harm or the person becoming gravely  
8 disabled within a reasonably short period of time.

9 (5) A new petition for involuntary treatment filed under subsection  
10 (3) or (4) of this section shall be filed and heard in the superior  
11 court of the county of the facility which is filing the new petition  
12 for involuntary treatment unless good cause is shown for a change of  
13 venue. The cost of the proceedings shall be borne by the state.

14 (6) The hearing shall be held as provided in RCW 71.05.310, and if  
15 the court or jury finds that the grounds for additional confinement as  
16 set forth in this ((subsection)) section are present, the court may  
17 order the committed person returned for an additional period of  
18 treatment not to exceed one hundred eighty days from the date of  
19 judgment. At the end of the one hundred eighty day period of  
20 commitment, the committed person shall be released unless a petition  
21 for another one hundred eighty day period of continued treatment is  
22 filed and heard in the same manner as provided in this ((subsection))  
23 section. Successive one hundred eighty day commitments are permissible  
24 on the same grounds and pursuant to the same procedures as the original  
25 one hundred eighty day commitment. However, a commitment is not  
26 permissible under subsection (4) of this section if thirty-six months  
27 have passed since the last date of discharge from detention for  
28 inpatient treatment that preceded the current less restrictive  
29 alternative order, nor shall a commitment under subsection (4) of this  
30 section be permissible if the likelihood of serious harm in subsection  
31 (4)(c) of this section is based solely on harm to the property of  
32 others.

33 ((+4)) (7) No person committed as provided in this section may be  
34 detained unless a valid order of commitment is in effect. No order of  
35 commitment can exceed one hundred eighty days in length.

36 NEW SECTION. Sec. 3. A new section is added to chapter 71.05 RCW  
37 to read as follows:

1           When appropriate and subject to available funds, the treatment and  
2 training of a person with a developmental disability who is committed  
3 to the custody of the department or to a facility certified for ninety  
4 day treatment by the department for a further period of intensive  
5 treatment under RCW 71.05.320 must be provided in a program  
6 specifically reserved for the treatment and training of persons with  
7 developmental disabilities. A person so committed shall receive  
8 habilitation services pursuant to an individualized service plan  
9 specifically developed to treat the behavior which was the subject of  
10 the criminal proceedings. The treatment program shall be administered  
11 by developmental disabilities professionals and others trained  
12 specifically in the needs of persons with developmental disabilities.  
13 The department may limit admissions to this specialized program in  
14 order to ensure that expenditures for services do not exceed amounts  
15 appropriated by the legislature and allocated by the department for  
16 such services. The department may establish admission priorities in  
17 the event that the number of eligible persons exceeds the limits set by  
18 the department."

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19           On page 1, line 2 of the title, after "treatment;" strike the  
20 remainder of the title and insert "amending RCW 71.05.320; adding a new  
21 section to chapter 71.05 RCW; and creating a new section."

**EFFECT:** Statutory language clarified. Prosecutor need not prove that the person has already decompensated or deteriorated in addition to proving that without an LRA order is needed to prevent a likelihood of serious harm or grave disability.

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