

ESSB 5106 - S AMD 320

By Senator O'Ban

ADOPTED 06/30/2017

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

3 **"Part One - Joel's Law Amendments**

4 **Sec. 1.** RCW 71.05.201 and 2016 c 107 s 1 are each amended to
5 read as follows:

6 (1) If a designated mental health professional decides not to
7 detain a person for evaluation and treatment under RCW 71.05.150 or
8 71.05.153 or forty-eight hours have elapsed since a designated mental
9 health professional received a request for investigation and the
10 designated mental health professional has not taken action to have
11 the person detained, an immediate family member or guardian or
12 conservator of the person may petition the superior court for the
13 person's initial detention.

14 (2) A petition under this section must be filed within ten
15 calendar days following the designated mental health professional
16 investigation or the request for a designated mental health
17 professional investigation. If more than ten days have elapsed, the
18 immediate family member, guardian, or conservator may request a new
19 designated mental health professional investigation.

20 (3)(a) The petition must be filed in the county in which the
21 designated mental health professional investigation occurred or was
22 requested to occur and must be submitted on forms developed by the
23 administrative office of the courts for this purpose. The petition
24 must be accompanied by a sworn declaration from the petitioner, and
25 other witnesses if desired, describing why the person should be
26 detained for evaluation and treatment. The description of why the
27 person should be detained may contain, but is not limited to, the
28 information identified in RCW 71.05.212.

29 (b) The petition must contain:

30 (i) A description of the relationship between the petitioner and
31 the person; and

1 (ii) The date on which an investigation was requested from the
2 designated mental health professional.

3 ~~((+3))~~ (4) The court shall, within one judicial day, review the
4 petition to determine whether the petition raises sufficient evidence
5 to support the allegation. If the court so finds, it shall provide a
6 copy of the petition to the designated mental health professional
7 agency with an order for the agency to provide the court, within one
8 judicial day, with a written sworn statement describing the basis for
9 the decision not to seek initial detention and a copy of all
10 information material to the designated mental health professional's
11 current decision.

12 ~~((+4))~~ (5) Following the filing of the petition and before the
13 court reaches a decision, any person, including a mental health
14 professional, may submit a sworn declaration to the court in support
15 of or in opposition to initial detention.

16 ~~((+5))~~ (6) The court shall dismiss the petition at any time if
17 it finds that a designated mental health professional has filed a
18 petition for the person's initial detention under RCW 71.05.150 or
19 71.05.153 or that the person has voluntarily accepted appropriate
20 treatment.

21 ~~((+6))~~ (7) The court must issue a final ruling on the petition
22 within five judicial days after it is filed. After reviewing all of
23 the information provided to the court, the court may enter an order
24 for initial detention if the court finds that: (a) There is probable
25 cause to support a petition for detention; and (b) the person has
26 refused or failed to accept appropriate evaluation and treatment
27 voluntarily. The court shall transmit its final decision to the
28 petitioner.

29 ~~((+7))~~ (8) If the court enters an order for initial detention,
30 it shall provide the order to the designated mental health
31 professional agency(~~(, which shall execute the order without delay)~~)
32 and issue a written order for apprehension of the person by a peace
33 officer for delivery of the person to a facility or emergency room
34 determined by the designated mental health professional. The
35 designated mental health agency serving the jurisdiction of the court
36 must collaborate and coordinate with law enforcement regarding
37 apprehensions and detentions under this subsection, including sharing
38 of information relating to risk and which would assist in locating
39 the person. A person may not be detained to jail pursuant to a
40 written order issued under this subsection. An order for detention

1 under this section should contain the advisement of rights which the
2 person would receive if the person were detained by a designated
3 mental health professional. An order for initial detention under this
4 section expires one hundred eighty days from issuance.

5 ((+8)) (9) Except as otherwise expressly stated in this chapter,
6 all procedures must be followed as if the order had been entered
7 under RCW 71.05.150. RCW 71.05.160 does not apply if detention was
8 initiated under the process set forth in this section.

9 ((+9)) (10) For purposes of this section, "immediate family
10 member" means a spouse, domestic partner, child, stepchild, parent,
11 stepparent, grandparent, or sibling.

12 **Sec. 2.** RCW 71.05.201 and 2016 sp.s. c 29 s 222 and 2016 c 107 s
13 1 are each reenacted and amended to read as follows:

14 (1) If a designated crisis responder decides not to detain a
15 person for evaluation and treatment under RCW 71.05.150 or 71.05.153
16 or forty-eight hours have elapsed since a designated crisis responder
17 received a request for investigation and the designated crisis
18 responder has not taken action to have the person detained, an
19 immediate family member or guardian or conservator of the person may
20 petition the superior court for the person's initial detention.

21 (2) A petition under this section must be filed within ten
22 calendar days following the designated crisis responder investigation
23 or the request for a designated crisis responder investigation. If
24 more than ten days have elapsed, the immediate family member,
25 guardian, or conservator may request a new designated crisis
26 responder investigation.

27 (3)(a) The petition must be filed in the county in which the
28 designated ((~~mental—health—professional~~)) crisis responder
29 investigation occurred or was requested to occur and must be
30 submitted on forms developed by the administrative office of the
31 courts for this purpose. The petition must be accompanied by a sworn
32 declaration from the petitioner, and other witnesses if desired,
33 describing why the person should be detained for evaluation and
34 treatment. The description of why the person should be detained may
35 contain, but is not limited to, the information identified in RCW
36 71.05.212.

37 (b) The petition must contain:

38 (i) A description of the relationship between the petitioner and
39 the person; and

1 (ii) The date on which an investigation was requested from the
2 designated crisis responder.

3 ~~((3))~~ (4) The court shall, within one judicial day, review the
4 petition to determine whether the petition raises sufficient evidence
5 to support the allegation. If the court so finds, it shall provide a
6 copy of the petition to the designated crisis responder agency with
7 an order for the agency to provide the court, within one judicial
8 day, with a written sworn statement describing the basis for the
9 decision not to seek initial detention and a copy of all information
10 material to the designated crisis responder's current decision.

11 ~~((4))~~ (5) Following the filing of the petition and before the
12 court reaches a decision, any person, including a mental health
13 professional, may submit a sworn declaration to the court in support
14 of or in opposition to initial detention.

15 ~~((5))~~ (6) The court shall dismiss the petition at any time if
16 it finds that a designated crisis responder has filed a petition for
17 the person's initial detention under RCW 71.05.150 or 71.05.153 or
18 that the person has voluntarily accepted appropriate treatment.

19 ~~((6))~~ (7) The court must issue a final ruling on the petition
20 within five judicial days after it is filed. After reviewing all of
21 the information provided to the court, the court may enter an order
22 for initial detention if the court finds that: (a) There is probable
23 cause to support a petition for detention; and (b) the person has
24 refused or failed to accept appropriate evaluation and treatment
25 voluntarily. The court shall transmit its final decision to the
26 petitioner.

27 ~~((7))~~ (8) If the court enters an order for initial detention,
28 it shall provide the order to the designated crisis responder
29 agency(~~(, which shall execute the order without delay)~~) and issue a
30 written order for apprehension of the person by a peace officer for
31 delivery of the person to a facility or emergency room determined by
32 the designated crisis responder. The designated crisis responder
33 agency serving the jurisdiction of the court must collaborate and
34 coordinate with law enforcement regarding apprehensions and
35 detentions under this subsection, including sharing of information
36 relating to risk and which would assist in locating the person. A
37 person may not be detained to jail pursuant to a written order issued
38 under this subsection. An order for detention under this section
39 should contain the advisement of rights which the person would
40 receive if the person were detained by a designated crisis responder.

1 An order for initial detention under this section expires one hundred
2 eighty days from issuance.

3 ~~((+8))~~ (9) Except as otherwise expressly stated in this chapter,
4 all procedures must be followed as if the order had been entered
5 under RCW 71.05.150. RCW 71.05.160 does not apply if detention was
6 initiated under the process set forth in this section.

7 ~~((+9))~~ (10) For purposes of this section, "immediate family
8 member" means a spouse, domestic partner, child, stepchild, parent,
9 stepparent, grandparent, or sibling.

10 **Sec. 3.** RCW 71.05.203 and 2015 c 258 s 3 are each amended to
11 read as follows:

12 (1) The department and each ~~((regional—support—network))~~
13 behavioral health organization or agency employing designated mental
14 health professionals shall publish information in an easily
15 accessible format describing the process for an immediate family
16 member, guardian, or conservator to petition for court review of a
17 detention decision under RCW 71.05.201.

18 (2) A designated mental health professional or designated mental
19 health professional agency that receives a request for investigation
20 for possible detention under this chapter must inquire whether the
21 request comes from an immediate family member, guardian, or
22 conservator who would be eligible to petition under RCW 71.05.201. If
23 the designated mental health professional decides not to detain the
24 person for evaluation and treatment under RCW 71.05.150 or 71.05.153
25 or forty-eight hours have elapsed since the request for investigation
26 was received and the designated mental health professional has not
27 taken action to have the person detained, the designated mental
28 health professional or designated mental health professional agency
29 must inform the immediate family member, guardian, or conservator who
30 made the request for investigation about the process to petition for
31 court review under RCW 71.05.201 and, to the extent feasible, provide
32 the immediate family member, guardian, or conservator with written or
33 electronic information about the petition process. If provision of
34 written or electronic information is not feasible, the designated
35 mental health professional or designated mental health professional
36 agency must refer the immediate family member, guardian, or
37 conservator to a web site where published information on the petition
38 process may be accessed. The designated mental health professional or
39 designated mental health professional agency must document the manner

1 and date on which the information required under this subsection was
2 provided to the immediate family member, guardian, or conservator.

3 (3) A designated mental health professional or designated mental
4 health professional agency must, upon request, disclose the date of a
5 designated mental health professional investigation under this
6 chapter to an immediate family member, guardian, or conservator of a
7 person to assist in the preparation of a petition under RCW
8 71.05.201.

9 **Sec. 4.** RCW 71.05.203 and 2016 sp.s. c 29 s 223 are each amended
10 to read as follows:

11 (1) The department and each behavioral health organization or
12 agency employing designated crisis responders shall publish
13 information in an easily accessible format describing the process for
14 an immediate family member, guardian, or conservator to petition for
15 court review of a detention decision under RCW 71.05.201.

16 (2) A designated crisis responder or designated crisis responder
17 agency that receives a request for investigation for possible
18 detention under this chapter must inquire whether the request comes
19 from an immediate family member, guardian, or conservator who would
20 be eligible to petition under RCW 71.05.201. If the designated crisis
21 responder decides not to detain the person for evaluation and
22 treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have
23 elapsed since the request for investigation was received and the
24 designated crisis responder has not taken action to have the person
25 detained, the designated crisis responder or designated crisis
26 responder agency must inform the immediate family member, guardian,
27 or conservator who made the request for investigation about the
28 process to petition for court review under RCW 71.05.201 and, to the
29 extent feasible, provide the immediate family member, guardian, or
30 conservator with written or electronic information about the petition
31 process. If provision of written or electronic information is not
32 feasible, the designated crisis responder or designated crisis
33 responder agency must refer the immediate family member, guardian, or
34 conservator to a web site where published information on the petition
35 process may be accessed. The designated crisis responder or
36 designated crisis responder agency must document the manner and date
37 on which the information required under this subsection was provided
38 to the immediate family member, guardian, or conservator.

1 (3) A designated crisis responder or designated crisis responder
2 agency must, upon request, disclose the date of a designated crisis
3 responder investigation under this chapter to an immediate family
4 member, guardian, or conservator of a person to assist in the
5 preparation of a petition under RCW 71.05.201.

6 NEW SECTION. Sec. 5. By December 15, 2017, the administrative
7 office of the courts, in collaboration with stakeholders, including
8 but not limited to judges, prosecutors, defense attorneys, the
9 department of social and health services, behavioral health
10 advocates, and families, shall: (1) Develop and publish on its web
11 site a user's guide to assist pro se litigants in the preparation and
12 filing of a petition under RCW 71.05.201; and (2) develop a model
13 order of detention under RCW 71.05.201 which contains an advisement
14 of rights for the detained person.

15 NEW SECTION. Sec. 6. Sections 1 and 3 of this act expire April
16 1, 2018.

17 NEW SECTION. Sec. 7. Sections 2 and 4 of this act take effect
18 April 1, 2018.

19 **Part Two - Less Restrictive Alternative Revocations**

20 **Sec. 8.** RCW 71.05.590 and 2015 c 250 s 13 are each amended to
21 read as follows:

22 (1) Either an agency or facility designated to monitor or provide
23 services under a less restrictive alternative order or conditional
24 release order, or a designated mental health professional, may take
25 action to enforce, modify, or revoke a less restrictive alternative
26 or conditional release order ~~((if))~~. The agency, facility, or
27 designated mental health professional ~~((determines))~~ must determine
28 that:

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

31 (b) Substantial deterioration in the person's functioning has
32 occurred;

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

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

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

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

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

15 (c) To request a court hearing for review and modification of the
16 court order. The request must be made to the court with jurisdiction
17 over the order and specify the circumstances that give rise to the
18 request and what modification is being sought. The county prosecutor
19 shall assist the agency or facility in requesting this hearing and
20 issuing an appropriate summons to the person. This subsection does
21 not limit the inherent authority of a treatment provider to alter
22 conditions of treatment for clinical reasons, and is intended to be
23 used only when court intervention is necessary or advisable to secure
24 the person's compliance and prevent 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) To initiate revocation procedures under subsection (4) of
4 this section.

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

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

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

27 (c) The designated mental health professional or secretary shall
28 (~~notify the court that originally ordered commitment within two~~
29 ~~judicial days of a person's detention and~~) file a revocation
30 petition and order of apprehension and detention with the court
31 (~~and~~) of the county where the person is currently located or being
32 detained. The designated mental health professional shall serve the
33 person and their attorney, guardian, and conservator, if any. The
34 person has the same rights with respect to notice, hearing, and
35 counsel as in any involuntary treatment proceeding, except as
36 specifically set forth in this section. There is no right to jury
37 trial. The venue for proceedings (~~regarding a petition for~~
38 ~~modification or revocation must be in~~) is the county (~~in which~~)
39 where the petition (~~was~~) is filed. Notice of the filing must be
40 provided to the court that originally ordered commitment, if

1 different from the court where the petition for revocation is filed,
2 within two judicial days of the person's detention.

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

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

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

29 **Sec. 9.** RCW 71.05.590 and 2016 sp.s. c 29 s 242 are each amended
30 to read as follows:

31 (1) Either an agency or facility designated to monitor or provide
32 services under a less restrictive alternative order or conditional
33 release order, or a designated crisis responder, may take action to
34 enforce, modify, or revoke a less restrictive alternative or
35 conditional release order ~~((if))~~. The agency, facility, or designated
36 crisis responder ~~((determines))~~ must determine that:

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

1 (b) Substantial deterioration in the person's functioning has
2 occurred;

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

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

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

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

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

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

30 (d) To cause the person to be transported by a peace officer,
31 designated crisis responder, or other means to the agency or facility
32 monitoring or providing services under the court order, or to a
33 triage facility, crisis stabilization unit, emergency department, or
34 to an evaluation and treatment facility if the person is committed
35 for mental health treatment, or to a secure detoxification facility
36 with available space or an approved substance use disorder treatment
37 program with available space if the person is committed for substance
38 use disorder treatment. The person may be detained at the facility
39 for up to twelve hours for the purpose of an evaluation to determine
40 whether modification, revocation, or commitment proceedings are

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

12 (e) To initiate revocation procedures under subsection (4) of
13 this section.

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

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

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

1 (c) The designated crisis responder or secretary shall (~~notify~~
2 ~~the court that originally ordered commitment within two judicial days~~
3 ~~of a person's detention and~~) file a revocation petition and order of
4 apprehension and detention with the court (~~and~~) of the county where
5 the person is currently located or being detained. The designated
6 crisis responder shall serve the person and their attorney, guardian,
7 and conservator, if any. The person has the same rights with respect
8 to notice, hearing, and counsel as in any involuntary treatment
9 proceeding, except as specifically set forth in this section. There
10 is no right to jury trial. The venue for proceedings (~~regarding a~~
11 ~~petition for modification or revocation must be in~~) is the county
12 (~~in which~~) where the petition (~~was~~) is filed. Notice of the
13 filing must be provided to the court that originally ordered
14 commitment, if different from the court where the petition for
15 revocation is filed, within two judicial days of the person's
16 detention.

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

36 (e) Revocation proceedings under this subsection (4) are not
37 allowable if the current commitment is solely based on the person
38 being in need of assisted outpatient mental health treatment. In
39 order to obtain a court order for detention for inpatient treatment

1 under this circumstance, a petition must be filed under RCW 71.05.150
2 or 71.05.153.

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

9 **Sec. 10.** RCW 71.05.590 and 2016 sp.s. c 29 s 243 are each
10 amended to read as follows:

11 (1) Either an agency or facility designated to monitor or provide
12 services under a less restrictive alternative order or conditional
13 release order, or a designated crisis responder, may take action to
14 enforce, modify, or revoke a less restrictive alternative or
15 conditional release order ~~((if))~~. The agency, facility, or designated
16 crisis responder ~~((determines))~~ must determine that:

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

19 (b) Substantial deterioration in the person's functioning has
20 occurred;

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

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

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

31 (a) To counsel~~((r))~~ or advise~~((, or admonish))~~ the person as to
32 their rights and responsibilities under the court order, and to offer
33 appropriate incentives to motivate compliance;

34 (b) To increase the intensity of outpatient services provided to
35 the person by increasing the frequency of contacts with the provider,
36 referring the person for an assessment for assertive community
37 services, or by other means;

38 (c) To request a court hearing for review and modification of the
39 court order. The request must be made to the court with jurisdiction

1 over the order and specify the circumstances that give rise to the
2 request and what modification is being sought. The county prosecutor
3 shall assist the agency or facility in requesting this hearing and
4 issuing an appropriate summons to the person. This subsection does
5 not limit the inherent authority of a treatment provider to alter
6 conditions of treatment for clinical reasons, and is intended to be
7 used only when court intervention is necessary or advisable to secure
8 the person's compliance and prevent decompensation or deterioration;

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

30 (e) To initiate revocation procedures under subsection (4) of
31 this section.

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

38 (4)(a) A designated crisis responder or the secretary may upon
39 their own motion or notification by the facility or agency designated
40 to provide outpatient care order a person subject to a court order

1 under this chapter to be apprehended and taken into custody and
2 temporary detention in an evaluation and treatment facility in or
3 near the county in which he or she is receiving outpatient treatment
4 if the person is committed for mental health treatment, or, if the
5 person is committed for substance use disorder treatment, in a secure
6 detoxification facility or approved substance use disorder treatment
7 program if either is available in or near the county in which he or
8 she is receiving outpatient treatment. Proceedings under this
9 subsection (4) may be initiated without ordering the apprehension and
10 detention of the person.

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

19 (c) The designated crisis responder or secretary shall (~~notify~~
20 ~~the court that originally ordered commitment within two judicial days~~
21 ~~of a person's detention and~~) file a revocation petition and order of
22 apprehension and detention with the court (~~and~~) of the county where
23 the person is currently located or being detained. The designated
24 crisis responder shall serve the person and their attorney, guardian,
25 and conservator, if any. The person has the same rights with respect
26 to notice, hearing, and counsel as in any involuntary treatment
27 proceeding, except as specifically set forth in this section. There
28 is no right to jury trial. The venue for proceedings (~~regarding a~~
29 ~~petition for modification or revocation must be in~~) is the county
30 (~~in which~~) where the petition (~~was~~) is filed. Notice of the
31 filing must be provided to the court that originally ordered
32 commitment, if different from the court where the petition for
33 revocation is filed, within two judicial days of the person's
34 detention.

35 (d) The issues for the court to determine are whether: (i) The
36 person adhered to the terms and conditions of the court order; (ii)
37 substantial deterioration in the person's functioning has occurred;
38 (iii) there is evidence of substantial decompensation with a
39 reasonable probability that the decompensation can be reversed by
40 further inpatient treatment; or (iv) there is a likelihood of serious

1 harm; and, if any of the above conditions apply, whether the court
2 should reinstate or modify the person's less restrictive alternative
3 or conditional release order or order the person's detention for
4 inpatient treatment. The person may waive the court hearing and allow
5 the court to enter a stipulated order upon the agreement of all
6 parties. If the court orders detention for inpatient treatment, the
7 treatment period may be for no longer than the period authorized in
8 the original court order.

9 (e) Revocation proceedings under this subsection (4) are not
10 allowable if the current commitment is solely based on the person
11 being in need of assisted outpatient mental health treatment. In
12 order to obtain a court order for detention for inpatient treatment
13 under this circumstance, a petition must be filed under RCW 71.05.150
14 or 71.05.153.

15 (5) In determining whether or not to take action under this
16 section the designated crisis responder, agency, or facility must
17 consider the factors specified under RCW 71.05.212 and the court must
18 consider the factors specified under RCW 71.05.245 as they apply to
19 the question of whether to enforce, modify, or revoke a court order
20 for involuntary treatment.

21 Part Three - Initial Detention Investigations

22 **Sec. 11.** RCW 71.05.154 and 2013 c 334 s 1 are each amended to
23 read as follows:

24 ((A)) If a person subject to evaluation under RCW 71.05.150 or
25 71.05.153 is located in an emergency room at the time of evaluation,
26 the designated mental health professional conducting ((an)) the
27 evaluation ((of a person under RCW 71.05.150 or 71.05.153 must
28 consult with any examining emergency room physician regarding the
29 physician's observations and opinions relating to the person's
30 condition, and whether, in the view of the physician, detention is
31 appropriate. The designated mental health professional)) shall take
32 serious consideration of observations and opinions by an examining
33 emergency room physician((s)), advanced registered nurse
34 practitioner, or physician assistant in determining whether detention
35 under this chapter is appropriate. The designated mental health
36 professional must document ((the)) his or her consultation with ((an
37 examining emergency room physician)) this professional, ((including))
38 if the professional is available, or his or her review of the

1 ((~~physician's~~)) professional's written observations or opinions
2 regarding whether detention of the person is appropriate.

3 **Sec. 12.** RCW 71.05.154 and 2016 sp.s. c 29 s 214 are each
4 amended to read as follows:

5 ((A)) If a person subject to evaluation under RCW 71.05.150 or
6 71.05.153 is located in an emergency room at the time of evaluation,
7 the designated crisis responder conducting ((an)) the evaluation ((of
8 a person under RCW 71.05.150 or 71.05.153 must consult with any
9 examining emergency room physician regarding the physician's
10 observations and opinions relating to the person's condition, and
11 whether, in the view of the physician, detention is appropriate. The
12 designated crisis responder)) shall take serious consideration of
13 observations and opinions by an examining emergency room
14 physician((s)), advanced registered nurse practitioner, or physician
15 assistant in determining whether detention under this chapter is
16 appropriate. The designated crisis responder must document ((the))
17 his or her consultation with ((an examining emergency room
18 physician)) this professional, ((including)) if the professional is
19 available, or his or her review of the ((physician's)) professional's
20 written observations or opinions regarding whether detention of the
21 person is appropriate.

22 **Part Four - Evaluation and Petition by Chemical**
23 **Dependency Professionals**

24 **Sec. 13.** RCW 70.96A.140 and 2016 sp.s. c 29 s 102 are each
25 amended to read as follows:

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

34 If a petition for commitment is not filed in the case of a minor,
35 the parent, guardian, or custodian who has custody of the minor may
36 seek review of that decision made by the designated chemical
37 dependency specialist in superior or district court. The parent,

1 guardian, or custodian shall file notice with the court and provide a
2 copy of the designated chemical dependency specialist's report.

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

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

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

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

33 (A) (~~Two physicians;~~) One physician, physician assistant, or
34 advanced registered nurse practitioner; and

35 (B) (~~One physician and a mental health professional;~~

36 ~~(C) One physician assistant and a mental health professional; or~~

37 ~~(D) One psychiatric advanced registered nurse practitioner and a~~
38 ~~mental health professional.~~

1 ~~(ii) The persons signing the petition must have examined the~~
2 ~~person))~~ One physician, physician assistant, advanced registered
3 nurse practitioner, or designated chemical dependency specialist.

4 (2) Upon filing the petition, the court shall fix a date for a
5 hearing no less than two and no more than seven days after the date
6 the petition was filed unless the person petitioned against is
7 presently being detained in a program, pursuant to RCW 70.96A.120,
8 71.05.210, or 71.34.710, in which case the hearing shall be held
9 within seventy-two hours of the filing of the petition(~~(:PROVIDED,~~
10 ~~HOWEVER, That))~~). The ((above specified)) seventy-two hours shall be
11 computed by excluding Saturdays, Sundays, and holidays(~~(:PROVIDED~~
12 ~~FURTHER, That,))~~). The court may, upon motion of the person whose
13 commitment is sought, or upon motion of petitioner with written
14 permission of the person whose commitment is sought, or his or her
15 counsel and, upon good cause shown, extend the date for the hearing.
16 A copy of the petition and of the notice of the hearing, including
17 the date fixed by the court, shall be served (~~(by the designated~~
18 ~~chemical dependency specialist))~~) on the person whose commitment is
19 sought, his or her next of kin, a parent or his or her legal guardian
20 if he or she is a minor, and any other person the court believes
21 advisable. A copy of the petition and certificate shall be delivered
22 to each person notified.

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

38 The record maker shall not be required to testify in order to
39 introduce medical, nursing, or psychological records of detained
40 persons so long as the requirements of RCW 5.45.020 are met, except

1 that portions of the record that contain opinions as to whether the
2 detained person (~~is chemically dependent~~) has a substance use
3 disorder shall be deleted from the records unless the person offering
4 the opinions is available for cross-examination. The person shall be
5 present unless the court believes that his or her presence is likely
6 to be injurious to him or her; in this event the court may deem it
7 appropriate to appoint a guardian ad litem to represent him or her
8 throughout the proceeding. If deemed advisable, the court may examine
9 the person out of courtroom. If the person has refused to be examined
10 by a licensed physician, psychiatric advanced registered nurse
11 practitioner, physician assistant, or (~~mental health professional~~)
12 designated chemical dependency specialist, he or she shall be given
13 an opportunity to be examined by a court appointed licensed
14 physician, psychiatric advanced registered nurse practitioner,
15 physician assistant, or other professional person qualified to
16 provide such services. If he or she refuses and there is sufficient
17 evidence to believe that the allegations of the petition are true, or
18 if the court believes that more medical evidence is necessary, the
19 court may make a temporary order committing him or her to the
20 department for a period of not more than five days for purposes of a
21 diagnostic examination.

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

33 (b) If the court finds that the grounds for commitment have been
34 established by a preponderance of the evidence, but that treatment in
35 a less restrictive setting than detention is in the best interest of
36 such person or others, the court shall order an appropriate less
37 restrictive course of treatment. The less restrictive order may
38 impose treatment conditions and other conditions that are in the best
39 interest of the respondent and others. A copy of the less restrictive
40 order must be given to the respondent, the designated chemical

1 dependency specialist, and any program designated to provide less
2 restrictive treatment. If the program designated to provide the less
3 restrictive treatment is other than the program providing the initial
4 involuntary treatment, the program so designated must agree in
5 writing to assume such responsibility. The court may not order
6 commitment of a person to a less restrictive course of treatment
7 unless it determines that an approved substance use disorder
8 treatment program is available and able to provide adequate and
9 appropriate treatment for him or her.

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

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

33 If a person has been committed because he or she (~~is chemically~~
34 ~~dependent~~) has a substance use disorder and is likely to inflict
35 physical harm on another, the program or designated chemical
36 dependency specialist shall apply for recommitment if after
37 examination it is determined that the likelihood still exists.

38 (6) Upon the filing of a petition for recommitment under
39 subsection (5) of this section, the court shall fix a date for
40 hearing no less than two and no more than seven days after the date

1 the petition was filed(~~(; PROVIDED, That,)~~). The court may, upon
2 motion of the person whose commitment is sought and upon good cause
3 shown, extend the date for the hearing. A copy of the petition and of
4 the notice of hearing, including the date fixed by the court, shall
5 be served by the treatment program on the person whose commitment is
6 sought, his or her next of kin, the original petitioner under
7 subsection (1) of this section if different from the petitioner for
8 recommitment, one of his or her parents or his or her legal guardian
9 if he or she is a minor, and his or her attorney and any other person
10 the court believes advisable. At the hearing the court shall proceed
11 as provided in subsections (3) and (4) of this section, except that
12 the burden of proof upon a hearing for recommitment must be proof by
13 clear, cogent, and convincing evidence.

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

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

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

30 (b) In case of a (~~chemically dependent~~) person with a substance
31 use disorder committed on the grounds of the need of treatment and
32 incapacity, that the incapacity no longer exists.

33 (9) The court shall inform the person whose commitment or
34 recommitment is sought of his or her right to contest the
35 application, be represented by counsel at every stage of any
36 proceedings relating to his or her commitment and recommitment, and
37 have counsel appointed by the court or provided by the court, if he
38 or she wants the assistance of counsel and is unable to obtain
39 counsel. If the court believes that the person needs the assistance
40 of counsel, the court shall require, by appointment if necessary,

1 counsel for him or her regardless of his or her wishes. The person
2 shall, if he or she is financially able, bear the costs of such legal
3 service; otherwise such legal service shall be at public expense. The
4 person whose commitment or recommitment is sought shall be informed
5 of his or her right to be examined by a licensed physician,
6 psychiatric advanced registered nurse practitioner, physician
7 assistant, designated chemical dependency specialist, or other
8 professional person of his or her choice who is qualified to provide
9 such services. If the person is unable to obtain a qualified person
10 and requests an examination, the court shall employ a licensed
11 physician, psychiatric advanced registered nurse practitioner,
12 physician assistant, designated chemical dependency specialist, or
13 other professional person to conduct an examination and testify on
14 behalf of the person.

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

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

20 (12) When in the opinion of the professional person in charge of
21 the program providing involuntary inpatient treatment under this
22 chapter, the committed patient can be appropriately served by less
23 restrictive treatment before expiration of the period of commitment,
24 then the less restrictive care may be required as a condition for
25 early release for a period which, when added to the initial treatment
26 period, does not exceed the period of commitment. If the program
27 designated to provide the less restrictive treatment is other than
28 the program providing the initial involuntary treatment, the program
29 so designated must agree in writing to assume such responsibility. A
30 copy of the conditions for early release shall be given to the
31 patient, the designated chemical dependency specialist of original
32 commitment, and the court of original commitment. The program
33 designated to provide less restrictive care may modify the conditions
34 for continued release when the modifications are in the best
35 interests of the patient. If the program providing less restrictive
36 care and the designated chemical dependency specialist determine that
37 a conditionally released patient is failing to adhere to the terms
38 and conditions of his or her release, or that substantial
39 deterioration in the patient's functioning has occurred, then the
40 designated chemical dependency specialist shall notify the court of

1 original commitment and request a hearing to be held no less than two
2 and no more than seven days after the date of the request to
3 determine whether or not the person should be returned to more
4 restrictive care. The designated chemical dependency specialist shall
5 file a petition with the court stating the facts substantiating the
6 need for the hearing along with the treatment recommendations. The
7 patient shall have the same rights with respect to notice, hearing,
8 and counsel as for the original involuntary treatment proceedings.
9 The issues to be determined at the hearing are whether the
10 conditionally released patient did or did not adhere to the terms and
11 conditions of his or her release to less restrictive care or that
12 substantial deterioration of the patient's functioning has occurred
13 and whether the conditions of release should be modified or the
14 person should be returned to a more restrictive program. The hearing
15 may be waived by the patient and his or her counsel and his or her
16 guardian or conservator, if any, but may not be waived unless all
17 such persons agree to the waiver. Upon waiver, the person may be
18 returned for involuntary treatment or continued on conditional
19 release on the same or modified conditions. The grounds and
20 procedures for revocation of less restrictive alternative treatment
21 ordered by the court must be the same as those set forth in this
22 section for less restrictive care arranged by an approved substance
23 use disorder treatment program as a condition for early release.

24 **Sec. 14.** RCW 71.05.020 and 2016 sp.s. c 29 s 204 and 2016 c 155
25 s 1 are each reenacted and amended to read as follows:

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

28 (1) "Admission" or "admit" means a decision by a physician,
29 physician assistant, or psychiatric advanced registered nurse
30 practitioner that a person should be examined or treated as a patient
31 in a hospital;

32 (2) "Alcoholism" means a disease, characterized by a dependency
33 on alcoholic beverages, loss of control over the amount and
34 circumstances of use, symptoms of tolerance, physiological or
35 psychological withdrawal, or both, if use is reduced or discontinued,
36 and impairment of health or disruption of social or economic
37 functioning;

38 (3) "Antipsychotic medications" means that class of drugs
39 primarily used to treat serious manifestations of mental illness

1 associated with thought disorders, which includes, but is not limited
2 to atypical antipsychotic medications;

3 (4) "Approved substance use disorder treatment program" means a
4 program for persons with a substance use disorder provided by a
5 treatment program certified by the department as meeting standards
6 adopted under chapter 71.24 RCW;

7 (5) "Attending staff" means any person on the staff of a public
8 or private agency having responsibility for the care and treatment of
9 a patient;

10 (6) "Chemical dependency" means:

11 (a) Alcoholism;

12 (b) Drug addiction; or

13 (c) Dependence on alcohol and one or more psychoactive chemicals,
14 as the context requires;

15 (7) "Chemical dependency professional" means a person certified
16 as a chemical dependency professional by the department of health
17 under chapter 18.205 RCW;

18 (8) "Commitment" means the determination by a court that a person
19 should be detained for a period of either evaluation or treatment, or
20 both, in an inpatient or a less restrictive setting;

21 (9) "Conditional release" means a revocable modification of a
22 commitment, which may be revoked upon violation of any of its terms;

23 (10) "Crisis stabilization unit" means a short-term facility or a
24 portion of a facility licensed by the department of health and
25 certified by the department of social and health services under RCW
26 71.24.035, such as an evaluation and treatment facility or a
27 hospital, which has been designed to assess, diagnose, and treat
28 individuals experiencing an acute crisis without the use of long-term
29 hospitalization;

30 (11) "Custody" means involuntary detention under the provisions
31 of this chapter or chapter 10.77 RCW, uninterrupted by any period of
32 unconditional release from commitment from a facility providing
33 involuntary care and treatment;

34 (12) "Department" means the department of social and health
35 services;

36 (13) "Designated crisis responder" means a mental health
37 professional appointed by the behavioral health organization to
38 perform the duties specified in this chapter;

39 (14) "Detention" or "detain" means the lawful confinement of a
40 person, under the provisions of this chapter;

1 (15) "Developmental disabilities professional" means a person who
2 has specialized training and three years of experience in directly
3 treating or working with persons with developmental disabilities and
4 is a psychiatrist, physician assistant working with a supervising
5 psychiatrist, psychologist, psychiatric advanced registered nurse
6 practitioner, or social worker, and such other developmental
7 disabilities professionals as may be defined by rules adopted by the
8 secretary;

9 (16) "Developmental disability" means that condition defined in
10 RCW 71A.10.020(5);

11 (17) "Discharge" means the termination of hospital medical
12 authority. The commitment may remain in place, be terminated, or be
13 amended by court order;

14 (18) "Drug addiction" means a disease, characterized by a
15 dependency on psychoactive chemicals, loss of control over the amount
16 and circumstances of use, symptoms of tolerance, physiological or
17 psychological withdrawal, or both, if use is reduced or discontinued,
18 and impairment of health or disruption of social or economic
19 functioning;

20 (19) "Evaluation and treatment facility" means any facility which
21 can provide directly, or by direct arrangement with other public or
22 private agencies, emergency evaluation and treatment, outpatient
23 care, and timely and appropriate inpatient care to persons suffering
24 from a mental disorder, and which is certified as such by the
25 department. The department may certify single beds as temporary
26 evaluation and treatment beds under RCW 71.05.745. A physically
27 separate and separately operated portion of a state hospital may be
28 designated as an evaluation and treatment facility. A facility which
29 is part of, or operated by, the department or any federal agency will
30 not require certification. No correctional institution or facility,
31 or jail, shall be an evaluation and treatment facility within the
32 meaning of this chapter;

33 (20) "Gravely disabled" means a condition in which a person, as a
34 result of a mental disorder, or as a result of the use of alcohol or
35 other psychoactive chemicals: (a) Is in danger of serious physical
36 harm resulting from a failure to provide for his or her essential
37 human needs of health or safety; or (b) manifests severe
38 deterioration in routine functioning evidenced by repeated and
39 escalating loss of cognitive or volitional control over his or her

1 actions and is not receiving such care as is essential for his or her
2 health or safety;

3 (21) "Habilitative services" means those services provided by
4 program personnel to assist persons in acquiring and maintaining life
5 skills and in raising their levels of physical, mental, social, and
6 vocational functioning. Habilitative services include education,
7 training for employment, and therapy. The habilitative process shall
8 be undertaken with recognition of the risk to the public safety
9 presented by the person being assisted as manifested by prior charged
10 criminal conduct;

11 (22) "History of one or more violent acts" refers to the period
12 of time ten years prior to the filing of a petition under this
13 chapter, excluding any time spent, but not any violent acts
14 committed, in a mental health facility, a long-term alcoholism or
15 drug treatment facility, or in confinement as a result of a criminal
16 conviction;

17 (23) "Imminent" means the state or condition of being likely to
18 occur at any moment or near at hand, rather than distant or remote;

19 (24) "Individualized service plan" means a plan prepared by a
20 developmental disabilities professional with other professionals as a
21 team, for a person with developmental disabilities, which shall
22 state:

23 (a) The nature of the person's specific problems, prior charged
24 criminal behavior, and habilitation needs;

25 (b) The conditions and strategies necessary to achieve the
26 purposes of habilitation;

27 (c) The intermediate and long-range goals of the habilitation
28 program, with a projected timetable for the attainment;

29 (d) The rationale for using this plan of habilitation to achieve
30 those intermediate and long-range goals;

31 (e) The staff responsible for carrying out the plan;

32 (f) Where relevant in light of past criminal behavior and due
33 consideration for public safety, the criteria for proposed movement
34 to less-restrictive settings, criteria for proposed eventual
35 discharge or release, and a projected possible date for discharge or
36 release; and

37 (g) The type of residence immediately anticipated for the person
38 and possible future types of residences;

39 (25) "Information related to mental health services" means all
40 information and records compiled, obtained, or maintained in the

1 course of providing services to either voluntary or involuntary
2 recipients of services by a mental health service provider. This may
3 include documents of legal proceedings under this chapter or chapter
4 71.34 or 10.77 RCW, or somatic health care information;

5 (26) "Intoxicated person" means a person whose mental or physical
6 functioning is substantially impaired as a result of the use of
7 alcohol or other psychoactive chemicals;

8 (27) "In need of assisted outpatient mental health treatment"
9 means that a person, as a result of a mental disorder: (a) Has been
10 committed by a court to detention for involuntary mental health
11 treatment at least twice during the preceding thirty-six months, or,
12 if the person is currently committed for involuntary mental health
13 treatment, the person has been committed to detention for involuntary
14 mental health treatment at least once during the thirty-six months
15 preceding the date of initial detention of the current commitment
16 cycle; (b) is unlikely to voluntarily participate in outpatient
17 treatment without an order for less restrictive alternative
18 treatment, in view of the person's treatment history or current
19 behavior; (c) is unlikely to survive safely in the community without
20 supervision; (d) is likely to benefit from less restrictive
21 alternative treatment; and (e) requires less restrictive alternative
22 treatment to prevent a relapse, decompensation, or deterioration that
23 is likely to result in the person presenting a likelihood of serious
24 harm or the person becoming gravely disabled within a reasonably
25 short period of time. For purposes of (a) of this subsection, time
26 spent in a mental health facility or in confinement as a result of a
27 criminal conviction is excluded from the thirty-six month
28 calculation;

29 (28) "Judicial commitment" means a commitment by a court pursuant
30 to the provisions of this chapter;

31 (29) "Legal counsel" means attorneys and staff employed by county
32 prosecutor offices or the state attorney general acting in their
33 capacity as legal representatives of public mental health and
34 substance use disorder service providers under RCW 71.05.130;

35 (30) "Less restrictive alternative treatment" means a program of
36 individualized treatment in a less restrictive setting than inpatient
37 treatment that includes the services described in RCW 71.05.585;

38 (31) "Licensed physician" means a person licensed to practice
39 medicine or osteopathic medicine and surgery in the state of
40 Washington;

1 (32) "Likelihood of serious harm" means:

2 (a) A substantial risk that: (i) Physical harm will be inflicted
3 by a person upon his or her own person, as evidenced by threats or
4 attempts to commit suicide or inflict physical harm on oneself; (ii)
5 physical harm will be inflicted by a person upon another, as
6 evidenced by behavior which has caused such harm or which places
7 another person or persons in reasonable fear of sustaining such harm;
8 or (iii) physical harm will be inflicted by a person upon the
9 property of others, as evidenced by behavior which has caused
10 substantial loss or damage to the property of others; or

11 (b) The person has threatened the physical safety of another and
12 has a history of one or more violent acts;

13 (33) "Medical clearance" means a physician or other health care
14 provider has determined that a person is medically stable and ready
15 for referral to the designated crisis responder;

16 (34) "Mental disorder" means any organic, mental, or emotional
17 impairment which has substantial adverse effects on a person's
18 cognitive or volitional functions;

19 (35) "Mental health professional" means a psychiatrist,
20 psychologist, physician assistant working with a supervising
21 psychiatrist, psychiatric advanced registered nurse practitioner,
22 psychiatric nurse, or social worker, and such other mental health
23 professionals as may be defined by rules adopted by the secretary
24 pursuant to the provisions of this chapter;

25 (36) "Mental health service provider" means a public or private
26 agency that provides mental health services to persons with mental
27 disorders or substance use disorders as defined under this section
28 and receives funding from public sources. This includes, but is not
29 limited to, hospitals licensed under chapter 70.41 RCW, evaluation
30 and treatment facilities as defined in this section, community mental
31 health service delivery systems or behavioral health programs as
32 defined in RCW 71.24.025, facilities conducting competency
33 evaluations and restoration under chapter 10.77 RCW, approved
34 substance use disorder treatment programs as defined in this section,
35 secure detoxification facilities as defined in this section, and
36 correctional facilities operated by state and local governments;

37 (37) "Peace officer" means a law enforcement official of a public
38 agency or governmental unit, and includes persons specifically given
39 peace officer powers by any state law, local ordinance, or judicial
40 order of appointment;

1 (38) "Physician assistant" means a person licensed as a physician
2 assistant under chapter 18.57A or 18.71A RCW;

3 (39) "Private agency" means any person, partnership, corporation,
4 or association that is not a public agency, whether or not financed
5 in whole or in part by public funds, which constitutes an evaluation
6 and treatment facility or private institution, or hospital, or
7 approved substance use disorder treatment program, which is conducted
8 for, or includes a department or ward conducted for, the care and
9 treatment of persons with mental illness, substance use disorders, or
10 both mental illness and substance use disorders;

11 (40) "Professional person" means a mental health professional,
12 chemical dependency professional, or designated crisis responder and
13 shall also mean a physician, physician assistant, psychiatric
14 advanced registered nurse practitioner, registered nurse, and such
15 others as may be defined by rules adopted by the secretary pursuant
16 to the provisions of this chapter;

17 (41) "Psychiatric advanced registered nurse practitioner" means a
18 person who is licensed as an advanced registered nurse practitioner
19 pursuant to chapter 18.79 RCW; and who is board certified in advanced
20 practice psychiatric and mental health nursing;

21 (42) "Psychiatrist" means a person having a license as a
22 physician and surgeon in this state who has in addition completed
23 three years of graduate training in psychiatry in a program approved
24 by the American medical association or the American osteopathic
25 association and is certified or eligible to be certified by the
26 American board of psychiatry and neurology;

27 (43) "Psychologist" means a person who has been licensed as a
28 psychologist pursuant to chapter 18.83 RCW;

29 (44) "Public agency" means any evaluation and treatment facility
30 or institution, secure detoxification facility, approved substance
31 use disorder treatment program, or hospital which is conducted for,
32 or includes a department or ward conducted for, the care and
33 treatment of persons with mental illness, substance use disorders, or
34 both mental illness and substance use disorders, if the agency is
35 operated directly by federal, state, county, or municipal government,
36 or a combination of such governments;

37 (45) "Registration records" include all the records of the
38 department, behavioral health organizations, treatment facilities,
39 and other persons providing services to the department, county
40 departments, or facilities which identify persons who are receiving

1 or who at any time have received services for mental illness or
2 substance use disorders;

3 (46) "Release" means legal termination of the commitment under
4 the provisions of this chapter;

5 (47) "Resource management services" has the meaning given in
6 chapter 71.24 RCW;

7 (48) "Secretary" means the secretary of the department of social
8 and health services, or his or her designee;

9 (49) "Secure detoxification facility" means a facility operated
10 by either a public or private agency or by the program of an agency
11 that:

12 (a) Provides for intoxicated persons:

13 (i) Evaluation and assessment, provided by certified chemical
14 dependency professionals;

15 (ii) Acute or subacute detoxification services; and

16 (iii) Discharge assistance provided by certified chemical
17 dependency professionals, including facilitating transitions to
18 appropriate voluntary or involuntary inpatient services or to less
19 restrictive alternatives as appropriate for the individual;

20 (b) Includes security measures sufficient to protect the
21 patients, staff, and community; and

22 (c) Is certified as such by the department;

23 (50) "Serious violent offense" has the same meaning as provided
24 in RCW 9.94A.030;

25 (51) "Social worker" means a person with a master's or further
26 advanced degree from a social work educational program accredited and
27 approved as provided in RCW 18.320.010;

28 (52) "Substance use disorder" means a cluster of cognitive,
29 behavioral, and physiological symptoms indicating that an individual
30 continues using the substance despite significant substance-related
31 problems. The diagnosis of a substance use disorder is based on a
32 pathological pattern of behaviors related to the use of the
33 substances;

34 (53) "Therapeutic court personnel" means the staff of a mental
35 health court or other therapeutic court which has jurisdiction over
36 defendants who are dually diagnosed with mental disorders, including
37 court personnel, probation officers, a court monitor, prosecuting
38 attorney, or defense counsel acting within the scope of therapeutic
39 court duties;

1 (54) "Treatment records" include registration and all other
2 records concerning persons who are receiving or who at any time have
3 received services for mental illness, which are maintained by the
4 department, by behavioral health organizations and their staffs, and
5 by treatment facilities. Treatment records include mental health
6 information contained in a medical bill including but not limited to
7 mental health drugs, a mental health diagnosis, provider name, and
8 dates of service stemming from a medical service. Treatment records
9 do not include notes or records maintained for personal use by a
10 person providing treatment services for the department, behavioral
11 health organizations, or a treatment facility if the notes or records
12 are not available to others;

13 (55) "Triage facility" means a short-term facility or a portion
14 of a facility licensed by the department of health and certified by
15 the department of social and health services under RCW 71.24.035,
16 which is designed as a facility to assess and stabilize an individual
17 or determine the need for involuntary commitment of an individual,
18 and must meet department of health residential treatment facility
19 standards. A triage facility may be structured as a voluntary or
20 involuntary placement facility;

21 (56) "Violent act" means behavior that resulted in homicide,
22 attempted suicide, nonfatal injuries, or substantial damage to
23 property.

24 **Sec. 15.** RCW 71.05.210 and 2016 sp.s. c 29 s 224 and 2016 c 155
25 s 2 are each reenacted and amended to read as follows:

26 (1) Each person involuntarily detained and accepted or admitted
27 at an evaluation and treatment facility, secure detoxification
28 facility, or approved substance use disorder treatment program:

29 (a) Shall, within twenty-four hours of his or her admission or
30 acceptance at the facility, not counting time periods prior to
31 medical clearance, be examined and evaluated by:

32 (i) One physician (~~(and a mental health professional)~~), physician
33 assistant, or advanced registered nurse practitioner; and

34 (ii) One (~~(physician assistant and a)~~) mental health
35 professional(~~(; or~~

36 ~~(iii) One advanced registered nurse practitioner and a mental~~
37 health)). If the person is detained for substance use disorder
38 evaluation and treatment, the person may be examined by a chemical
39 dependency professional instead of a mental health professional; and

1 (b) Shall receive such treatment and care as his or her condition
2 requires including treatment on an outpatient basis for the period
3 that he or she is detained, except that, beginning twenty-four hours
4 prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240,
5 71.05.310, 71.05.320, 71.05.590, or 71.05.217, the individual may
6 refuse psychiatric medications, but may not refuse: (i) Any other
7 medication previously prescribed by a person licensed under Title 18
8 RCW; or (ii) emergency lifesaving treatment, and the individual shall
9 be informed at an appropriate time of his or her right of such
10 refusal. The person shall be detained up to seventy-two hours, if, in
11 the opinion of the professional person in charge of the facility, or
12 his or her professional designee, the person presents a likelihood of
13 serious harm, or is gravely disabled. A person who has been detained
14 for seventy-two hours shall no later than the end of such period be
15 released, unless referred for further care on a voluntary basis, or
16 detained pursuant to court order for further treatment as provided in
17 this chapter.

18 (2) If, after examination and evaluation, the mental health
19 professional or chemical dependency professional and licensed
20 physician, physician assistant, or psychiatric advanced registered
21 nurse practitioner determine that the initial needs of the person, if
22 detained to an evaluation and treatment facility, would be better
23 served by placement in a substance use disorder treatment
24 (~~facility~~) program, or, if detained to a secure detoxification
25 facility or approved substance use disorder treatment program, would
26 be better served in an evaluation and treatment facility then the
27 person shall be referred to the more appropriate placement; however,
28 a person may only be referred to a secure detoxification facility or
29 approved substance use disorder treatment program if there is an
30 available secure detoxification facility or approved substance use
31 disorder treatment program with adequate space for the person.

32 (3) An evaluation and treatment center, secure detoxification
33 facility, or approved substance use disorder treatment program
34 admitting or accepting any person pursuant to this chapter whose
35 physical condition reveals the need for hospitalization shall assure
36 that such person is transferred to an appropriate hospital for
37 evaluation or admission for treatment. Notice of such fact shall be
38 given to the court, the designated attorney, and the designated
39 crisis responder and the court shall order such continuance in

1 proceedings under this chapter as may be necessary, but in no event
2 may this continuance be more than fourteen days.

3 **Sec. 16.** RCW 71.05.210 and 2016 sp.s. c 29 s 225 are each
4 amended to read as follows:

5 (1) Each person involuntarily detained and accepted or admitted
6 at an evaluation and treatment facility, secure detoxification
7 facility, or approved substance use disorder treatment program:

8 (a) Shall, within twenty-four hours of his or her admission or
9 acceptance at the facility, not counting time periods prior to
10 medical clearance, be examined and evaluated by:

11 (i) One physician (~~(and a mental health professional)~~), physician
12 assistant, or advanced registered nurse practitioner; and

13 (ii) One (~~(physician assistant and a)~~) mental health
14 professional(~~(; or~~

15 ~~(iii) One advanced registered nurse practitioner and a mental~~
16 ~~health)).~~ If the person is detained for substance use disorder
17 evaluation and treatment, the person may be examined by a chemical
18 dependency professional instead of a mental health professional; and

19 (b) Shall receive such treatment and care as his or her condition
20 requires including treatment on an outpatient basis for the period
21 that he or she is detained, except that, beginning twenty-four hours
22 prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240,
23 71.05.310, 71.05.320, 71.05.590, or 71.05.217, the individual may
24 refuse psychiatric medications, but may not refuse: (i) Any other
25 medication previously prescribed by a person licensed under Title 18
26 RCW; or (ii) emergency lifesaving treatment, and the individual shall
27 be informed at an appropriate time of his or her right of such
28 refusal. The person shall be detained up to seventy-two hours, if, in
29 the opinion of the professional person in charge of the facility, or
30 his or her professional designee, the person presents a likelihood of
31 serious harm, or is gravely disabled. A person who has been detained
32 for seventy-two hours shall no later than the end of such period be
33 released, unless referred for further care on a voluntary basis, or
34 detained pursuant to court order for further treatment as provided in
35 this chapter.

36 (2) If, after examination and evaluation, the mental health
37 professional or chemical dependency professional and licensed
38 physician, physician assistant, or psychiatric advanced registered
39 nurse practitioner determine that the initial needs of the person, if

1 detained to an evaluation and treatment facility, would be better
2 served by placement in a substance use disorder treatment
3 ((facility)) program, or, if detained to a secure detoxification
4 facility or approved substance use disorder treatment program, would
5 be better served in an evaluation and treatment facility than the
6 person shall be referred to the more appropriate placement.

7 (3) An evaluation and treatment center, secure detoxification
8 facility, or approved substance use disorder treatment program
9 admitting or accepting any person pursuant to this chapter whose
10 physical condition reveals the need for hospitalization shall assure
11 that such person is transferred to an appropriate hospital for
12 evaluation or admission for treatment. Notice of such fact shall be
13 given to the court, the designated attorney, and the designated
14 crisis responder and the court shall order such continuance in
15 proceedings under this chapter as may be necessary, but in no event
16 may this continuance be more than fourteen days.

17 **Sec. 17.** RCW 71.05.230 and 2016 sp.s. c 29 s 230, 2016 c 155 s
18 5, and 2016 c 45 s 1 are each reenacted and amended to read as
19 follows:

20 A person detained or committed for seventy-two hour evaluation
21 and treatment or for an outpatient evaluation for the purpose of
22 filing a petition for a less restrictive alternative treatment order
23 may be committed for not more than fourteen additional days of
24 involuntary intensive treatment or ninety additional days of a less
25 restrictive alternative to involuntary intensive treatment. A
26 petition may only be filed if the following conditions are met:

27 (1) The professional staff of the agency or facility providing
28 evaluation services has analyzed the person's condition and finds
29 that the condition is caused by mental disorder or substance use
30 disorder and results in a likelihood of serious harm, results in the
31 person being gravely disabled, or results in the person being in need
32 of assisted outpatient mental health treatment, and are prepared to
33 testify those conditions are met; and

34 (2) The person has been advised of the need for voluntary
35 treatment and the professional staff of the facility has evidence
36 that he or she has not in good faith volunteered; and

37 (3) The agency or facility providing intensive treatment or which
38 proposes to supervise the less restrictive alternative is certified
39 to provide such treatment by the department; and

1 (4)(a)(i) The professional staff of the agency or facility or the
2 designated crisis responder has filed a petition with the court for a
3 fourteen day involuntary detention or a ninety day less restrictive
4 alternative. The petition must be signed (~~either~~) by:

5 (~~(a) Two physicians~~) (A) One physician, physician assistant, or
6 psychiatric advanced registered nurse practitioner; and

7 (~~(b)~~) (B) One physician (~~and a~~), physician assistant,
8 psychiatric advanced registered nurse practitioner, or mental health
9 professional(;

10 ~~(c) One physician assistant and a mental health professional; or~~

11 ~~(d) One psychiatric advanced registered nurse practitioner and a~~
12 mental health professional).

13 (ii) If the petition is for substance use disorder treatment, the
14 petition may be signed by a chemical dependency professional instead
15 of a mental health professional and by an advanced registered nurse
16 practitioner instead of a psychiatric advanced registered nurse
17 practitioner. The persons signing the petition must have examined the
18 person.

19 (b) If involuntary detention is sought the petition shall state
20 facts that support the finding that such person, as a result of a
21 mental disorder or substance use disorder, presents a likelihood of
22 serious harm, or is gravely disabled and that there are no less
23 restrictive alternatives to detention in the best interest of such
24 person or others. The petition shall state specifically that less
25 restrictive alternative treatment was considered and specify why
26 treatment less restrictive than detention is not appropriate. If an
27 involuntary less restrictive alternative is sought, the petition
28 shall state facts that support the finding that such person, as a
29 result of a mental disorder or as a result of a substance use
30 disorder, presents a likelihood of serious harm, is gravely disabled,
31 or is in need of assisted outpatient mental health treatment, and
32 shall set forth any recommendations for less restrictive alternative
33 treatment services; and

34 (5) A copy of the petition has been served on the detained or
35 committed person, his or her attorney and his or her guardian or
36 conservator, if any, prior to the probable cause hearing; and

37 (6) The court at the time the petition was filed and before the
38 probable cause hearing has appointed counsel to represent such person
39 if no other counsel has appeared; and

1 (7) The petition reflects that the person was informed of the
2 loss of firearm rights if involuntarily committed for mental health
3 treatment; and

4 (8) At the conclusion of the initial commitment period, the
5 professional staff of the agency or facility or the designated crisis
6 responder may petition for an additional period of either ninety days
7 of less restrictive alternative treatment or ninety days of
8 involuntary intensive treatment as provided in RCW 71.05.290; and

9 (9) If the hospital or facility designated to provide less
10 restrictive alternative treatment is other than the facility
11 providing involuntary treatment, the outpatient facility so
12 designated to provide less restrictive alternative treatment has
13 agreed to assume such responsibility.

14 **Sec. 18.** RCW 71.05.290 and 2016 sp.s. c 29 s 235, 2016 c 155 s
15 6, and 2016 c 45 s 3 are each reenacted and amended to read as
16 follows:

17 (1) At any time during a person's fourteen day intensive
18 treatment period, the professional person in charge of a treatment
19 facility or his or her professional designee or the designated crisis
20 responder may petition the superior court for an order requiring such
21 person to undergo an additional period of treatment. Such petition
22 must be based on one or more of the grounds set forth in RCW
23 71.05.280.

24 (2)(a)(i) The petition shall summarize the facts which support
25 the need for further commitment and shall be supported by affidavits
26 based on an examination of the patient and signed by:

27 (~~((a) Two physicians))~~ (A) One physician, physician assistant, or
28 psychiatric advanced registered nurse practitioner; and

29 (~~((b))~~) (B) One physician ((and a)), physician assistant,
30 psychiatric advanced registered nurse practitioner, or mental health
31 professional((+)

32 ~~(c) One physician assistant and a mental health professional; or~~

33 ~~(d) One psychiatric advanced registered nurse practitioner and a~~
34 ~~mental health professional))~~.

35 (ii) If the petition is for substance use disorder treatment, the
36 petition may be signed by a chemical dependency professional instead
37 of a mental health professional and by an advanced registered nurse
38 practitioner instead of a psychiatric advanced registered nurse
39 practitioner.

1 **(b)** The affidavits shall describe in detail the behavior of the
2 detained person which supports the petition and shall explain what,
3 if any, less restrictive treatments which are alternatives to
4 detention are available to such person, and shall state the
5 willingness of the affiant to testify to such facts in subsequent
6 judicial proceedings under this chapter. If less restrictive
7 alternative treatment is sought, the petition shall set forth any
8 recommendations for less restrictive alternative treatment services.

9 (3) If a person has been determined to be incompetent pursuant to
10 RCW 10.77.086(4), then the professional person in charge of the
11 treatment facility or his or her professional designee or the
12 designated crisis responder may directly file a petition for one
13 hundred eighty day treatment under RCW 71.05.280(3). No petition for
14 initial detention or fourteen day detention is required before such a
15 petition may be filed.

16 **Sec. 19.** RCW 71.05.300 and 2016 sp.s. c 29 s 236 and 2016 c 155
17 s 7 are each reenacted and amended to read as follows:

18 (1) The petition for ninety day treatment shall be filed with the
19 clerk of the superior court at least three days before expiration of
20 the fourteen-day period of intensive treatment. At the time of filing
21 such petition, the clerk shall set a time for the person to come
22 before the court on the next judicial day after the day of filing
23 unless such appearance is waived by the person's attorney, and the
24 clerk shall notify the designated crisis responder. The designated
25 crisis responder shall immediately notify the person detained, his or
26 her attorney, if any, and his or her guardian or conservator, if any,
27 the prosecuting attorney, and the behavioral health organization
28 administrator, and provide a copy of the petition to such persons as
29 soon as possible. The behavioral health organization administrator or
30 designee may review the petition and may appear and testify at the
31 full hearing on the petition.

32 (2) At the time set for appearance the detained person shall be
33 brought before the court, unless such appearance has been waived and
34 the court shall advise him or her of his or her right to be
35 represented by an attorney, his or her right to a jury trial, and, if
36 the petition is for commitment for mental health treatment, his or
37 her loss of firearm rights if involuntarily committed. If the
38 detained person is not represented by an attorney, or is indigent or
39 is unwilling to retain an attorney, the court shall immediately

1 appoint an attorney to represent him or her. The court shall, if
2 requested, appoint a reasonably available licensed physician,
3 physician assistant, psychiatric advanced registered nurse
4 practitioner, psychologist, ((~~or~~)) psychiatrist, or other
5 professional person, designated by the detained person to examine and
6 testify on behalf of the detained person.

7 (3) The court may, if requested, also appoint a professional
8 person as defined in RCW 71.05.020 to seek less restrictive
9 alternative courses of treatment and to testify on behalf of the
10 detained person. In the case of a person with a developmental
11 disability who has been determined to be incompetent pursuant to RCW
12 10.77.086(4), then the appointed professional person under this
13 section shall be a developmental disabilities professional.

14 (4) The court shall also set a date for a full hearing on the
15 petition as provided in RCW 71.05.310.

16 **Sec. 20.** RCW 71.05.360 and 2016 sp.s. c 29 s 244 and 2016 c 155
17 s 8 are each reenacted and amended to read as follows:

18 (1)(a) Every person involuntarily detained or committed under the
19 provisions of this chapter shall be entitled to all the rights set
20 forth in this chapter, which shall be prominently posted in the
21 facility, and shall retain all rights not denied him or her under
22 this chapter except as chapter 9.41 RCW may limit the right of a
23 person to purchase or possess a firearm or to qualify for a concealed
24 pistol license if the person is committed under RCW 71.05.240 or
25 71.05.320 for mental health treatment.

26 (b) No person shall be presumed incompetent as a consequence of
27 receiving an evaluation or voluntary or involuntary treatment for a
28 mental disorder or substance use disorder, under this chapter or any
29 prior laws of this state dealing with mental illness or substance use
30 disorders. Competency shall not be determined or withdrawn except
31 under the provisions of chapter 10.77 or 11.88 RCW.

32 (c) Any person who leaves a public or private agency following
33 evaluation or treatment for a mental disorder or substance use
34 disorder shall be given a written statement setting forth the
35 substance of this section.

36 (2) Each person involuntarily detained or committed pursuant to
37 this chapter shall have the right to adequate care and individualized
38 treatment.

1 (3) The provisions of this chapter shall not be construed to deny
2 to any person treatment by spiritual means through prayer in
3 accordance with the tenets and practices of a church or religious
4 denomination.

5 (4) Persons receiving evaluation or treatment under this chapter
6 shall be given a reasonable choice of an available physician,
7 physician assistant, psychiatric advanced registered nurse
8 practitioner, or other professional person qualified to provide such
9 services.

10 (5) Whenever any person is detained for evaluation and treatment
11 pursuant to this chapter, both the person and, if possible, a
12 responsible member of his or her immediate family, personal
13 representative, guardian, or conservator, if any, shall be advised as
14 soon as possible in writing or orally, by the officer or person
15 taking him or her into custody or by personnel of the evaluation and
16 treatment facility, secure detoxification facility, or approved
17 substance use disorder treatment program where the person is detained
18 that unless the person is released or voluntarily admits himself or
19 herself for treatment within seventy-two hours of the initial
20 detention:

21 (a) A judicial hearing in a superior court, either by a judge or
22 court commissioner thereof, shall be held not more than seventy-two
23 hours after the initial detention to determine whether there is
24 probable cause to detain the person after the seventy-two hours have
25 expired for up to an additional fourteen days without further
26 automatic hearing for the reason that the person is a person whose
27 mental disorder or substance use disorder presents a likelihood of
28 serious harm or that the person is gravely disabled;

29 (b) The person has a right to communicate immediately with an
30 attorney; has a right to have an attorney appointed to represent him
31 or her before and at the probable cause hearing if he or she is
32 indigent; and has the right to be told the name and address of the
33 attorney that the mental health professional has designated pursuant
34 to this chapter;

35 (c) The person has the right to remain silent and that any
36 statement he or she makes may be used against him or her;

37 (d) The person has the right to present evidence and to cross-
38 examine witnesses who testify against him or her at the probable
39 cause hearing; and

1 (e) The person has the right to refuse psychiatric medications,
2 including antipsychotic medication beginning twenty-four hours prior
3 to the probable cause hearing.

4 (6) When proceedings are initiated under RCW 71.05.153, no later
5 than twelve hours after such person is admitted to the evaluation and
6 treatment facility, secure detoxification facility, or approved
7 substance use disorder treatment program the personnel of the
8 facility or the designated crisis responder shall serve on such
9 person a copy of the petition for initial detention and the name,
10 business address, and phone number of the designated attorney and
11 shall forthwith commence service of a copy of the petition for
12 initial detention on the designated attorney.

13 (7) The judicial hearing described in subsection (5) of this
14 section is hereby authorized, and shall be held according to the
15 provisions of subsection (5) of this section and rules promulgated by
16 the supreme court.

17 (8) At the probable cause hearing the detained person shall have
18 the following rights in addition to the rights previously specified:

19 (a) To present evidence on his or her behalf;

20 (b) To cross-examine witnesses who testify against him or her;

21 (c) To be proceeded against by the rules of evidence;

22 (d) To remain silent;

23 (e) To view and copy all petitions and reports in the court file.

24 (9) Privileges between patients and physicians, physician
25 assistants, psychologists, or psychiatric advanced registered nurse
26 practitioners are deemed waived in proceedings under this chapter
27 relating to the administration of antipsychotic medications. As to
28 other proceedings under this chapter, the privileges shall be waived
29 when a court of competent jurisdiction in its discretion determines
30 that such waiver is necessary to protect either the detained person
31 or the public.

32 The waiver of a privilege under this section is limited to
33 records or testimony relevant to evaluation of the detained person
34 for purposes of a proceeding under this chapter. Upon motion by the
35 detained person or on its own motion, the court shall examine a
36 record or testimony sought by a petitioner to determine whether it is
37 within the scope of the waiver.

38 The record maker shall not be required to testify in order to
39 introduce medical or psychological records of the detained person so
40 long as the requirements of RCW 5.45.020 are met except that portions

1 of the record which contain opinions as to the detained person's
2 mental state must be deleted from such records unless the person
3 making such conclusions is available for cross-examination.

4 (10) Insofar as danger to the person or others is not created,
5 each person involuntarily detained, treated in a less restrictive
6 alternative course of treatment, or committed for treatment and
7 evaluation pursuant to this chapter shall have, in addition to other
8 rights not specifically withheld by law, the following rights:

9 (a) To wear his or her own clothes and to keep and use his or her
10 own personal possessions, except when deprivation of same is
11 essential to protect the safety of the resident or other persons;

12 (b) To keep and be allowed to spend a reasonable sum of his or
13 her own money for canteen expenses and small purchases;

14 (c) To have access to individual storage space for his or her
15 private use;

16 (d) To have visitors at reasonable times;

17 (e) To have reasonable access to a telephone, both to make and
18 receive confidential calls, consistent with an effective treatment
19 program;

20 (f) To have ready access to letter writing materials, including
21 stamps, and to send and receive uncensored correspondence through the
22 mails;

23 (g) To discuss treatment plans and decisions with professional
24 persons;

25 (h) Not to consent to the administration of antipsychotic
26 medications and not to thereafter be administered antipsychotic
27 medications unless ordered by a court under RCW 71.05.217 or pursuant
28 to an administrative hearing under RCW 71.05.215;

29 (i) Not to consent to the performance of electroconvulsant
30 therapy or surgery, except emergency lifesaving surgery, unless
31 ordered by a court under RCW 71.05.217;

32 (j) Not to have psychosurgery performed on him or her under any
33 circumstances;

34 (k) To dispose of property and sign contracts unless such person
35 has been adjudicated an incompetent in a court proceeding directed to
36 that particular issue.

37 (11) Every person involuntarily detained shall immediately be
38 informed of his or her right to a hearing to review the legality of
39 his or her detention and of his or her right to counsel, by the
40 professional person in charge of the facility providing evaluation

1 and treatment, or his or her designee, and, when appropriate, by the
2 court. If the person so elects, the court shall immediately appoint
3 an attorney to assist him or her.

4 (12) A person challenging his or her detention or his or her
5 attorney shall have the right to designate and have the court appoint
6 a reasonably available independent physician, physician assistant,
7 psychiatric advanced registered nurse practitioner, or (~~licensed~~
8 ~~mental health~~) other professional person to examine the person
9 detained, the results of which examination may be used in the
10 proceeding. The person shall, if he or she is financially able, bear
11 the cost of such expert examination, otherwise such expert
12 examination shall be at public expense.

13 (13) Nothing contained in this chapter shall prohibit the patient
14 from petitioning by writ of habeas corpus for release.

15 (14) Nothing in this chapter shall prohibit a person committed on
16 or prior to January 1, 1974, from exercising a right available to him
17 or her at or prior to January 1, 1974, for obtaining release from
18 confinement.

19 (15) Nothing in this section permits any person to knowingly
20 violate a no-contact order or a condition of an active judgment and
21 sentence or an active condition of supervision by the department of
22 corrections.

23 **Sec. 21.** RCW 71.05.760 and 2016 sp.s. c 29 s 201 are each
24 amended to read as follows:

25 (1)(a) By April 1, 2018, the department, by rule, must combine
26 the functions of a designated mental health professional and
27 designated chemical dependency specialist by establishing a
28 designated crisis responder who is authorized to conduct
29 investigations, detain persons up to seventy-two hours to the proper
30 facility, and carry out the other functions identified in this
31 chapter and chapter 71.34 RCW. The behavioral health organizations
32 shall provide training to the designated crisis responders as
33 required by the department.

34 (b)(i) To qualify as a designated crisis responder, a person must
35 have received chemical dependency training as determined by the
36 department and be a:

37 (A) Psychiatrist, psychologist, physician assistant working with
38 a supervising psychiatrist, psychiatric advanced registered nurse
39 practitioner, or social worker;

1 (B) Person with a master's degree or further advanced degree in
2 counseling or one of the social sciences from an accredited college
3 or university and who have, in addition, at least two years of
4 experience in direct treatment of persons with mental illness or
5 emotional disturbance, such experience gained under the direction of
6 a mental health professional;

7 (C) Person who meets the waiver criteria of RCW 71.24.260, which
8 waiver was granted before 1986;

9 (D) Person who had an approved waiver to perform the duties of a
10 mental health professional that was requested by the regional support
11 network and granted by the department before July 1, 2001; or

12 (E) Person who has been granted an exception of the minimum
13 requirements of a mental health professional by the department
14 consistent with rules adopted by the secretary.

15 (ii) Training must include chemical dependency training specific
16 to the duties of a designated crisis responder, including diagnosis
17 of substance abuse and dependence and assessment of risk associated
18 with substance use.

19 (c) The department must develop a transition process for any
20 person who has been designated as a designated mental health
21 professional or a designated chemical dependency specialist before
22 April 1, 2018, to be converted to a designated crisis responder. The
23 behavioral health organizations shall provide training, as required
24 by the department, to persons converting to designated crisis
25 responders, which must include both mental health and chemical
26 dependency training applicable to the designated crisis responder
27 role.

28 (2)(a) The department must ensure that at least one sixteen-bed
29 secure detoxification facility is operational by April 1, 2018, and
30 that at least two sixteen-bed secure detoxification facilities are
31 operational by April 1, 2019.

32 (b) If, at any time during the implementation of secure
33 detoxification facility capacity, federal funding becomes unavailable
34 for federal match for services provided in secure detoxification
35 facilities, then the department must cease any expansion of secure
36 detoxification facilities until further direction is provided by the
37 legislature.

38 **Part Five - Technical**

1 NEW SECTION. **Sec. 22.** Section 13 of this act is necessary for
2 the immediate preservation of the public peace, health, or safety, or
3 support of the state government and its existing public institutions,
4 and takes effect immediately.

5 NEW SECTION. **Sec. 23.** Sections 8, 11, and 13 of this act expire
6 April 1, 2018.

7 NEW SECTION. **Sec. 24.** Sections 9, 12, 14, 15, and 17 through 21
8 of this act take effect April 1, 2018.

9 NEW SECTION. **Sec. 25.** Sections 9 and 15 of this act expire July
10 1, 2026.

11 NEW SECTION. **Sec. 26.** Sections 10 and 16 of this act take
12 effect July 1, 2026."

ESSB 5106 - S AMD 320
By Senator O'Ban

ADOPTED 06/30/2017

13 On page 1, line 2 of the title, after "act;" strike the remainder
14 of the title and insert "amending RCW 71.05.201, 71.05.203,
15 71.05.203, 71.05.590, 71.05.590, 71.05.590, 71.05.154, 71.05.154,
16 70.96A.140, 71.05.210, and 71.05.760; reenacting and amending RCW
17 71.05.201, 71.05.020, 71.05.210, 71.05.230, 71.05.290, 71.05.300, and
18 71.05.360; creating a new section; providing effective dates;
19 providing expiration dates; and declaring an emergency."

EFFECT: Requires a designated mental health professional (DMHP) or DMHP agency to provide an immediate family member, guardian, or conservator with written or electronic information about the process to petition for court review when the DMHP does not detain a person after a request for investigation. If written or electronic information is not feasible, requires the DMHP or DMHP agency to refer the person to a web site where information about the petition process may be accessed. Requires the DMHP to document the manner and date on which the required information is provided.

Removes a provision stating that the requirement for a designated mental health professional to consult with and take serious consideration of the observations and opinions of an examining emergency room physician, advanced registered nurse practitioner, or physician assistant as to whether a person should be detained does not create an exception to the general rule stated in the Involuntary

Treatment Act (ITA) that courts should decide ITA petitions on their merits in light of the state's police power interest in protecting the safety of individuals and the public.

Under the chemical dependency commitment laws in effect until April 1, 2018, replaces chemical dependency professionals with designated chemical dependency specialists in the list of professionals that may examine a person and sign a commitment petition for a person who is in need of substance use disorder treatment.

Clarifies that a chemical dependency professional may evaluate a person and sign a commitment petition only in the case of a person who is being evaluated or detained for substance use disorder treatment and provides that psychiatric advanced registered nurse practitioners, rather than advanced registered nurse practitioners, may sign commitment petitions for persons who may be in need of mental health treatment.

Amends the statute governing petitions for 90-day involuntary treatment commitments to be consistent with changes made to the statutes governing petitions for 14-day commitments.

Adds physician assistants working with a supervising psychiatrist to a section designating the mental health professionals that may qualify as designated crisis responders for the purposes of the involuntary mental health and substance use disorder treatment systems.

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