
SUBSTITUTE SENATE BILL 6124

State of Washington

65th Legislature

2018 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Dhingra, Palumbo, Mullet, Frockt, Takko, Darneille, Rolfes, Billig, Cleveland, Kuderer, Wellman, Carlyle, Ranker, Hasegawa, Saldaña, Nelson, Keiser, McCoy, Van De Wege, Chase, and O'Ban)

1 AN ACT Relating to clarifying that court hearings under the
2 involuntary commitment act may be conducted by video; and amending
3 RCW 71.05.020.

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

5 **Sec. 1.** RCW 71.05.020 and 2017 3rd sp.s. c 14 s 14 are each
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Admission" or "admit" means a decision by a physician,
10 physician assistant, or psychiatric advanced registered nurse
11 practitioner that a person should be examined or treated as a patient
12 in a hospital;

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

19 (3) "Antipsychotic medications" means that class of drugs
20 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) "Hearing" means any proceeding conducted in open court. For
12 purposes of this chapter, at any hearing the petitioner, the
13 respondent, the witnesses, and the presiding judicial officer may be
14 present and participate either in person or by video, as determined
15 by the court. The term "video" as used herein shall include any
16 functional equivalent. At any hearing conducted by video, the
17 technology used must permit the judicial officer, counsel, all
18 parties, and the witnesses to be able to see, hear, and speak, when
19 authorized, during the hearing; to allow attorneys to use exhibits or
20 other materials during the hearing; and to allow respondent's counsel
21 to be in the same location as the respondent unless otherwise
22 requested by the respondent or the respondent's counsel. Witnesses in
23 a proceeding may also appear in court through other means, including
24 telephonically, pursuant to the requirements of superior court civil
25 rule 43. Notwithstanding the foregoing, the court, upon its own
26 motion or upon a motion for good cause by any party, may require all
27 parties and witnesses to participate in the hearing in person rather
28 than by video. In ruling on any such motion, the court may allow in-
29 person or video testimony; and the court may consider, among other
30 things, whether the respondent's alleged mental illness affects the
31 respondent's ability to perceive or participate in the proceeding by
32 video;

33 (23) "History of one or more violent acts" refers to the period
34 of time ten years prior to the filing of a petition under this
35 chapter, excluding any time spent, but not any violent acts
36 committed, in a mental health facility, a long-term alcoholism or
37 drug treatment facility, or in confinement as a result of a criminal
38 conviction;

1 (~~(23)~~) (24) "Imminent" means the state or condition of being
2 likely to occur at any moment or near at hand, rather than distant or
3 remote;

4 (~~(24)~~) (25) "Individualized service plan" means a plan prepared
5 by a developmental disabilities professional with other professionals
6 as a team, for a person with developmental disabilities, which shall
7 state:

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

10 (b) The conditions and strategies necessary to achieve the
11 purposes of habilitation;

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

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

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

17 (f) Where relevant in light of past criminal behavior and due
18 consideration for public safety, the criteria for proposed movement
19 to less-restrictive settings, criteria for proposed eventual
20 discharge or release, and a projected possible date for discharge or
21 release; and

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

24 (~~(25)~~) (26) "Information related to mental health services"
25 means all information and records compiled, obtained, or maintained
26 in the course of providing services to either voluntary or
27 involuntary recipients of services by a mental health service
28 provider. This may include documents of legal proceedings under this
29 chapter or chapter 71.34 or 10.77 RCW, or somatic health care
30 information;

31 (~~(26)~~) (27) "Intoxicated person" means a person whose mental or
32 physical functioning is substantially impaired as a result of the use
33 of alcohol or other psychoactive chemicals;

34 (~~(27)~~) (28) "In need of assisted outpatient mental health
35 treatment" means that a person, as a result of a mental disorder: (a)
36 Has been committed by a court to detention for involuntary mental
37 health treatment at least twice during the preceding thirty-six
38 months, or, if the person is currently committed for involuntary
39 mental health treatment, the person has been committed to detention
40 for involuntary mental health treatment at least once during the

1 thirty-six months preceding the date of initial detention of the
2 current commitment cycle; (b) is unlikely to voluntarily participate
3 in outpatient treatment without an order for less restrictive
4 alternative treatment, in view of the person's treatment history or
5 current behavior; (c) is unlikely to survive safely in the community
6 without supervision; (d) is likely to benefit from less restrictive
7 alternative treatment; and (e) requires less restrictive alternative
8 treatment to prevent a relapse, decompensation, or deterioration that
9 is likely to result in the person presenting a likelihood of serious
10 harm or the person becoming gravely disabled within a reasonably
11 short period of time. For purposes of (a) of this subsection, time
12 spent in a mental health facility or in confinement as a result of a
13 criminal conviction is excluded from the thirty-six month
14 calculation;

15 ~~((+28+))~~ (29) "Judicial commitment" means a commitment by a court
16 pursuant to the provisions of this chapter;

17 ~~((+29+))~~ (30) "Legal counsel" means attorneys and staff employed
18 by county prosecutor offices or the state attorney general acting in
19 their capacity as legal representatives of public mental health and
20 substance use disorder service providers under RCW 71.05.130;

21 ~~((+30+))~~ (31) "Less restrictive alternative treatment" means a
22 program of individualized treatment in a less restrictive setting
23 than inpatient treatment that includes the services described in RCW
24 71.05.585;

25 ~~((+31+))~~ (32) "Licensed physician" means a person licensed to
26 practice medicine or osteopathic medicine and surgery in the state of
27 Washington;

28 ~~((+32+))~~ (33) "Likelihood of serious harm" means:

29 (a) A substantial risk that: (i) Physical harm will be inflicted
30 by a person upon his or her own person, as evidenced by threats or
31 attempts to commit suicide or inflict physical harm on oneself; (ii)
32 physical harm will be inflicted by a person upon another, as
33 evidenced by behavior which has caused such harm or which places
34 another person or persons in reasonable fear of sustaining such harm;
35 or (iii) physical harm will be inflicted by a person upon the
36 property of others, as evidenced by behavior which has caused
37 substantial loss or damage to the property of others; or

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

1 ~~((33))~~ (34) "Medical clearance" means a physician or other
2 health care provider has determined that a person is medically stable
3 and ready for referral to the designated crisis responder;

4 ~~((34))~~ (35) "Mental disorder" means any organic, mental, or
5 emotional impairment which has substantial adverse effects on a
6 person's cognitive or volitional functions;

7 ~~((35))~~ (36) "Mental health professional" means a psychiatrist,
8 psychologist, physician assistant working with a supervising
9 psychiatrist, psychiatric advanced registered nurse practitioner,
10 psychiatric nurse, or social worker, and such other mental health
11 professionals as may be defined by rules adopted by the secretary
12 pursuant to the provisions of this chapter;

13 ~~((36))~~ (37) "Mental health service provider" means a public or
14 private agency that provides mental health services to persons with
15 mental disorders or substance use disorders as defined under this
16 section and receives funding from public sources. This includes, but
17 is not limited to, hospitals licensed under chapter 70.41 RCW,
18 evaluation and treatment facilities as defined in this section,
19 community mental health service delivery systems or behavioral health
20 programs as defined in RCW 71.24.025, facilities conducting
21 competency evaluations and restoration under chapter 10.77 RCW,
22 approved substance use disorder treatment programs as defined in this
23 section, secure detoxification facilities as defined in this section,
24 and correctional facilities operated by state and local governments;

25 ~~((37))~~ (38) "Peace officer" means a law enforcement official of
26 a public agency or governmental unit, and includes persons
27 specifically given peace officer powers by any state law, local
28 ordinance, or judicial order of appointment;

29 ~~((38))~~ (39) "Physician assistant" means a person licensed as a
30 physician assistant under chapter 18.57A or 18.71A RCW;

31 ~~((39))~~ (40) "Private agency" means any person, partnership,
32 corporation, or association that is not a public agency, whether or
33 not financed in whole or in part by public funds, which constitutes
34 an evaluation and treatment facility or private institution, or
35 hospital, or approved substance use disorder treatment program, which
36 is conducted for, or includes a department or ward conducted for, the
37 care and treatment of persons with mental illness, substance use
38 disorders, or both mental illness and substance use disorders;

39 ~~((40))~~ (41) "Professional person" means a mental health
40 professional, chemical dependency professional, or designated crisis

1 responder and shall also mean a physician, physician assistant,
2 psychiatric advanced registered nurse practitioner, registered nurse,
3 and such others as may be defined by rules adopted by the secretary
4 pursuant to the provisions of this chapter;

5 ~~((41))~~ (42) "Psychiatric advanced registered nurse
6 practitioner" means a person who is licensed as an advanced
7 registered nurse practitioner pursuant to chapter 18.79 RCW; and who
8 is board certified in advanced practice psychiatric and mental health
9 nursing;

10 ~~((42))~~ (43) "Psychiatrist" means a person having a license as a
11 physician and surgeon in this state who has in addition completed
12 three years of graduate training in psychiatry in a program approved
13 by the American medical association or the American osteopathic
14 association and is certified or eligible to be certified by the
15 American board of psychiatry and neurology;

16 ~~((43))~~ (44) "Psychologist" means a person who has been licensed
17 as a psychologist pursuant to chapter 18.83 RCW;

18 ~~((44))~~ (45) "Public agency" means any evaluation and treatment
19 facility or institution, secure detoxification facility, approved
20 substance use disorder treatment program, or hospital which is
21 conducted for, or includes a department or ward conducted for, the
22 care and treatment of persons with mental illness, substance use
23 disorders, or both mental illness and substance use disorders, if the
24 agency is operated directly by federal, state, county, or municipal
25 government, or a combination of such governments;

26 ~~((45))~~ (46) "Registration records" include all the records of
27 the department, behavioral health organizations, treatment
28 facilities, and other persons providing services to the department,
29 county departments, or facilities which identify persons who are
30 receiving or who at any time have received services for mental
31 illness or substance use disorders;

32 ~~((46))~~ (47) "Release" means legal termination of the commitment
33 under the provisions of this chapter;

34 ~~((47))~~ (48) "Resource management services" has the meaning
35 given in chapter 71.24 RCW;

36 ~~((48))~~ (49) "Secretary" means the secretary of the department
37 of social and health services, or his or her designee;

38 ~~((49))~~ (50) "Secure detoxification facility" means a facility
39 operated by either a public or private agency or by the program of an
40 agency that:

1 (a) Provides for intoxicated persons:
2 (i) Evaluation and assessment, provided by certified chemical
3 dependency professionals;
4 (ii) Acute or subacute detoxification services; and
5 (iii) Discharge assistance provided by certified chemical
6 dependency professionals, including facilitating transitions to
7 appropriate voluntary or involuntary inpatient services or to less
8 restrictive alternatives as appropriate for the individual;
9 (b) Includes security measures sufficient to protect the
10 patients, staff, and community; and
11 (c) Is certified as such by the department;
12 ~~((+50+))~~ (51) "Serious violent offense" has the same meaning as
13 provided in RCW 9.94A.030;
14 ~~((+51+))~~ (52) "Social worker" means a person with a master's or
15 further advanced degree from a social work educational program
16 accredited and approved as provided in RCW 18.320.010;
17 ~~((+52+))~~ (53) "Substance use disorder" means a cluster of
18 cognitive, behavioral, and physiological symptoms indicating that an
19 individual continues using the substance despite significant
20 substance-related problems. The diagnosis of a substance use disorder
21 is based on a pathological pattern of behaviors related to the use of
22 the substances;
23 ~~((+53+))~~ (54) "Therapeutic court personnel" means the staff of a
24 mental health court or other therapeutic court which has jurisdiction
25 over defendants who are dually diagnosed with mental disorders,
26 including court personnel, probation officers, a court monitor,
27 prosecuting attorney, or defense counsel acting within the scope of
28 therapeutic court duties;
29 ~~((+54+))~~ (55) "Treatment records" include registration and all
30 other records concerning persons who are receiving or who at any time
31 have received services for mental illness, which are maintained by
32 the department, by behavioral health organizations and their staffs,
33 and by treatment facilities. Treatment records include mental health
34 information contained in a medical bill including but not limited to
35 mental health drugs, a mental health diagnosis, provider name, and
36 dates of service stemming from a medical service. Treatment records
37 do not include notes or records maintained for personal use by a
38 person providing treatment services for the department, behavioral
39 health organizations, or a treatment facility if the notes or records
40 are not available to others;

1 (~~(55)~~) (56) "Triage facility" means a short-term facility or a
2 portion of a facility licensed by the department of health and
3 certified by the department of social and health services under RCW
4 71.24.035, which is designed as a facility to assess and stabilize an
5 individual or determine the need for involuntary commitment of an
6 individual, and must meet department of health residential treatment
7 facility standards. A triage facility may be structured as a
8 voluntary or involuntary placement facility;
9 (~~(56)~~) (57) "Violent act" means behavior that resulted in
10 homicide, attempted suicide, nonfatal injuries, or substantial damage
11 to property.

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