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**SENATE BILL 5842**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Carlyle, Cleveland, and Dhingra

1 AN ACT Relating to the accessibility of electroconvulsant  
2 therapy; amending RCW 71.05.215, 71.05.217, 71.05.360, 71.34.355,  
3 71.34.370, and 71.34.020; and reenacting and amending RCW 71.05.120  
4 and 71.05.020.

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

6 **Sec. 1.** RCW 71.05.120 and 2016 sp.s. c 29 s 208 and 2016 c 158 s  
7 4 are each reenacted and amended to read as follows:

8 (1) No officer of a public or private agency, nor the  
9 superintendent, professional person in charge, his or her  
10 professional designee, or attending staff of any such agency, nor any  
11 public official performing functions necessary to the administration  
12 of this chapter, nor peace officer responsible for detaining a person  
13 pursuant to this chapter, nor any designated crisis responder, nor  
14 the state, a unit of local government, an evaluation and treatment  
15 facility, a secure detoxification facility, or an approved substance  
16 use disorder treatment program shall be civilly or criminally liable  
17 for performing duties pursuant to this chapter with regard to the  
18 decision of whether to admit, discharge, release, administer  
19 antipsychotic medications, administer electroconvulsant therapy, or  
20 detain a person for evaluation and treatment: PROVIDED, That such  
21 duties were performed in good faith and without gross negligence.

1 (2) Peace officers and their employing agencies are not liable  
2 for the referral of a person, or the failure to refer a person, to a  
3 mental health agency pursuant to a policy adopted pursuant to RCW  
4 71.05.457 if such action or inaction is taken in good faith and  
5 without gross negligence.

6 (3) This section does not relieve a person from giving the  
7 required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the  
8 duty to warn or to take reasonable precautions to provide protection  
9 from violent behavior where the patient has communicated an actual  
10 threat of physical violence against a reasonably identifiable victim  
11 or victims. The duty to warn or to take reasonable precautions to  
12 provide protection from violent behavior is discharged if reasonable  
13 efforts are made to communicate the threat to the victim or victims  
14 and to law enforcement personnel.

15 **Sec. 2.** RCW 71.05.215 and 2018 c 201 s 3008 are each amended to  
16 read as follows:

17 (1) A person found to be gravely disabled or presents a  
18 likelihood of serious harm as a result of a mental disorder or  
19 substance use disorder has a right to refuse antipsychotic medication  
20 and the right to refuse electroconvulsant therapy unless it is  
21 determined that the failure to medicate or perform electroconvulsant  
22 therapy may result in a likelihood of serious harm or substantial  
23 deterioration or substantially prolong the length of involuntary  
24 commitment and there is no less intrusive course of treatment than  
25 medication or electroconvulsant therapy in the best interest of that  
26 person.

27 (2) The authority shall adopt rules to carry out the purposes of  
28 this chapter. These rules shall include:

29 (a) An attempt to obtain the informed consent of the person prior  
30 to administration of antipsychotic medication or electroconvulsant  
31 therapy.

32 (b) For short-term treatment up to thirty days, the right to  
33 refuse antipsychotic medications or electroconvulsant therapy unless  
34 there is an additional concurring medical opinion approving  
35 medication or electroconvulsant therapy by a psychiatrist, physician  
36 assistant working with a supervising psychiatrist, psychiatric  
37 advanced registered nurse practitioner, or physician or physician  
38 assistant in consultation with a mental health professional with  
39 prescriptive authority.

1 (c) For continued treatment beyond thirty days through the  
2 hearing on any petition filed under RCW 71.05.217, the right to  
3 periodic review of the decision to medicate or perform  
4 electroconvulsant therapy by the medical director or designee.

5 (d) Administration of antipsychotic medication or  
6 electroconvulsant therapy in an emergency and review of this decision  
7 within twenty-four hours. An emergency exists if the person presents  
8 an imminent likelihood of serious harm, and medically acceptable  
9 alternatives to administration of antipsychotic medications or  
10 electroconvulsant therapy are not available or are unlikely to be  
11 successful; and in the opinion of the physician, physician assistant,  
12 or psychiatric advanced registered nurse practitioner, the person's  
13 condition constitutes an emergency requiring the treatment be  
14 instituted prior to obtaining a second medical opinion.

15 (e) Documentation in the medical record of the attempt by the  
16 physician, physician assistant, or psychiatric advanced registered  
17 nurse practitioner to obtain informed consent and the reasons why  
18 antipsychotic medication or electroconvulsant therapy is being  
19 administered over the person's objection or lack of consent.

20 **Sec. 3.** RCW 71.05.217 and 2016 c 155 s 4 are each amended to  
21 read as follows:

22 Insofar as danger to the individual or others is not created,  
23 each person involuntarily detained, treated in a less restrictive  
24 alternative course of treatment, or committed for treatment and  
25 evaluation pursuant to this chapter shall have, in addition to other  
26 rights not specifically withheld by law, the following rights, a list  
27 of which shall be prominently posted in all facilities, institutions,  
28 and hospitals providing such services:

29 (1) To wear his or her own clothes and to keep and use his or her  
30 own personal possessions, except when deprivation of same is  
31 essential to protect the safety of the resident or other persons;

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

34 (3) To have access to individual storage space for his or her  
35 private use;

36 (4) To have visitors at reasonable times;

37 (5) To have reasonable access to a telephone, both to make and  
38 receive confidential calls;

1 (6) To have ready access to letter writing materials, including  
2 stamps, and to send and receive uncensored correspondence through the  
3 mails;

4 (7) Not to consent to the administration of antipsychotic  
5 medications or electroconvulsant therapy beyond the hearing conducted  
6 pursuant to RCW 71.05.320(4) or the performance of  
7 (~~electroconvulsant therapy or~~) surgery, except emergency lifesaving  
8 surgery, unless ordered by a court of competent jurisdiction pursuant  
9 to the following standards and procedures:

10 (a) The administration of antipsychotic medication or  
11 electroconvulsant therapy shall not be ordered unless the petitioning  
12 party proves by clear, cogent, and convincing evidence that there  
13 exists a compelling state interest that justifies overriding the  
14 patient's lack of consent to the administration of antipsychotic  
15 medications or electroconvulsant therapy, that the proposed treatment  
16 is necessary and effective, and that medically acceptable alternative  
17 forms of treatment are not available, have not been successful, or  
18 are not likely to be effective.

19 (b) The court shall make specific findings of fact concerning:  
20 (i) The existence of one or more compelling state interests; (ii) the  
21 necessity and effectiveness of the treatment; and (iii) the person's  
22 desires regarding the proposed treatment. If the patient is unable to  
23 make a rational and informed decision about consenting to or refusing  
24 the proposed treatment, the court shall make a substituted judgment  
25 for the patient as if he or she were competent to make such a  
26 determination.

27 (c) The person shall be present at any hearing on a request to  
28 administer antipsychotic medication or electroconvulsant therapy  
29 filed pursuant to this subsection. The person has the right: (i) To  
30 be represented by an attorney; (ii) to present evidence; (iii) to  
31 cross-examine witnesses; (iv) to have the rules of evidence enforced;  
32 (v) to remain silent; (vi) to view and copy all petitions and reports  
33 in the court file; and (vii) to be given reasonable notice and an  
34 opportunity to prepare for the hearing. The court may appoint a  
35 psychiatrist, physician assistant working with a supervising  
36 psychiatrist, psychiatric advanced registered nurse practitioner,  
37 psychologist within their scope of practice, physician assistant, or  
38 physician to examine and testify on behalf of such person. The court  
39 shall appoint a psychiatrist, physician assistant working with a  
40 supervising psychiatrist, psychiatric advanced registered nurse

1 practitioner, psychologist within their scope of practice, physician  
2 assistant, or physician designated by such person or the person's  
3 counsel to testify on behalf of the person in cases where an order  
4 for electroconvulsant therapy is sought.

5 (d) An order for the administration of antipsychotic medications  
6 or electroconvulsant therapy entered following a hearing conducted  
7 pursuant to this section shall be effective for the period of the  
8 current involuntary treatment order, and any interim period during  
9 which the person is awaiting trial or hearing on a new petition for  
10 involuntary treatment ~~((or))~~, involuntary medication, or  
11 electroconvulsant therapy.

12 (e) Any person detained pursuant to RCW 71.05.320(4), who  
13 subsequently refuses antipsychotic medication or electroconvulsant  
14 therapy, shall be entitled to the procedures set forth in this  
15 subsection.

16 (f) Antipsychotic medication or electroconvulsant therapy may be  
17 administered to a nonconsenting person detained or committed pursuant  
18 to this chapter without a court order pursuant to RCW 71.05.215(2) or  
19 under the following circumstances:

20 (i) A person presents an imminent likelihood of serious harm;

21 (ii) Medically acceptable alternatives to administration of  
22 antipsychotic medications or electroconvulsant therapy are not  
23 available, have not been successful, or are not likely to be  
24 effective; and

25 (iii) In the opinion of the physician, physician assistant, or  
26 psychiatric advanced registered nurse practitioner with  
27 responsibility for treatment of the person, or his or her designee,  
28 the person's condition constitutes an emergency requiring the  
29 treatment be instituted before a judicial hearing as authorized  
30 pursuant to this section can be held.

31 If antipsychotic medications or electroconvulsant therapy are  
32 administered over a person's lack of consent pursuant to this  
33 subsection, a petition for an order authorizing the administration of  
34 antipsychotic medications or electroconvulsant therapy shall be filed  
35 on the next judicial day. The hearing shall be held within two  
36 judicial days. If deemed necessary by the physician, physician  
37 assistant, or psychiatric advanced registered nurse practitioner with  
38 responsibility for the treatment of the person, administration of  
39 antipsychotic medications or electroconvulsant therapy may continue  
40 until the hearing is held;

1 (8) To dispose of property and sign contracts unless such person  
2 has been adjudicated an incompetent in a court proceeding directed to  
3 that particular issue;

4 (9) Not to have psychosurgery performed on him or her under any  
5 circumstances.

6 **Sec. 4.** RCW 71.05.360 and 2017 3rd sp.s. c 14 s 20 are each  
7 amended to read as follows:

8 (1)(a) Every person involuntarily detained or committed under the  
9 provisions of this chapter shall be entitled to all the rights set  
10 forth in this chapter, which shall be prominently posted in the  
11 facility, and shall retain all rights not denied him or her under  
12 this chapter except as chapter 9.41 RCW may limit the right of a  
13 person to purchase or possess a firearm or to qualify for a concealed  
14 pistol license if the person is committed under RCW 71.05.240 or  
15 71.05.320 for mental health treatment.

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

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

26 (2) Each person involuntarily detained or committed pursuant to  
27 this chapter shall have the right to adequate care and individualized  
28 treatment.

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

33 (4) Persons receiving evaluation or treatment under this chapter  
34 shall be given a reasonable choice of an available physician,  
35 physician assistant, psychiatric advanced registered nurse  
36 practitioner, or other professional person qualified to provide such  
37 services.

38 (5) Whenever any person is detained for evaluation and treatment  
39 pursuant to this chapter, both the person and, if possible, a

1 responsible member of his or her immediate family, personal  
2 representative, guardian, or conservator, if any, shall be advised as  
3 soon as possible in writing or orally, by the officer or person  
4 taking him or her into custody or by personnel of the evaluation and  
5 treatment facility, secure detoxification facility, or approved  
6 substance use disorder treatment program where the person is detained  
7 that unless the person is released or voluntarily admits himself or  
8 herself for treatment within seventy-two hours of the initial  
9 detention:

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

18 (b) The person has a right to communicate immediately with an  
19 attorney; has a right to have an attorney appointed to represent him  
20 or her before and at the probable cause hearing if he or she is  
21 indigent; and has the right to be told the name and address of the  
22 attorney that the mental health professional has designated pursuant  
23 to this chapter;

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

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

29 (e) The person has the right to refuse psychiatric medications or  
30 electroconvulsant therapy, including antipsychotic medication  
31 beginning twenty-four hours prior to the probable cause hearing.

32 (6) When proceedings are initiated under RCW 71.05.153, no later  
33 than twelve hours after such person is admitted to the evaluation and  
34 treatment facility, secure detoxification facility, or approved  
35 substance use disorder treatment program the personnel of the  
36 facility or the designated crisis responder shall serve on such  
37 person a copy of the petition for initial detention and the name,  
38 business address, and phone number of the designated attorney and  
39 shall forthwith commence service of a copy of the petition for  
40 initial detention on the designated attorney.

1 (7) The judicial hearing described in subsection (5) of this  
2 section is hereby authorized, and shall be held according to the  
3 provisions of subsection (5) of this section and rules promulgated by  
4 the supreme court.

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

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

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

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

10 (d) To remain silent;

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

12 (9) Privileges between patients and physicians, physician  
13 assistants, psychologists, or psychiatric advanced registered nurse  
14 practitioners are deemed waived in proceedings under this chapter  
15 relating to the administration of antipsychotic medications or  
16 electroconvulsant therapy. As to other proceedings under this  
17 chapter, the privileges shall be waived when a court of competent  
18 jurisdiction in its discretion determines that such waiver is  
19 necessary to protect either the detained person or the public.

20 The waiver of a privilege under this section is limited to  
21 records or testimony relevant to evaluation of the detained person  
22 for purposes of a proceeding under this chapter. Upon motion by the  
23 detained person or on its own motion, the court shall examine a  
24 record or testimony sought by a petitioner to determine whether it is  
25 within the scope of the waiver.

26 The record maker shall not be required to testify in order to  
27 introduce medical or psychological records of the detained person so  
28 long as the requirements of RCW 5.45.020 are met except that portions  
29 of the record which contain opinions as to the detained person's  
30 mental state must be deleted from such records unless the person  
31 making such conclusions is available for cross-examination.

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

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



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

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

5 (d) To have visitors at reasonable times;

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

9 (f) To have ready access to letter writing materials, including  
10 stamps, and to send and receive uncensored correspondence through the  
11 mails;

12 (g) To discuss treatment plans and decisions with professional  
13 persons;

14 (h) Not to consent to the administration of antipsychotic  
15 medications or electroconvulsant therapy and not to thereafter be  
16 administered antipsychotic medications or electroconvulsant therapy  
17 unless ordered by a court under RCW 71.05.217 or pursuant to an  
18 administrative hearing under RCW 71.05.215;

19 (i) Not to consent to the performance of (~~electroconvulsant~~  
20 ~~therapy or~~) surgery, except emergency lifesaving surgery, unless  
21 ordered by a court under RCW 71.05.217;

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

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

27 (11) Every person involuntarily detained shall immediately be  
28 informed of his or her right to a hearing to review the legality of  
29 his or her detention and of his or her right to counsel, by the  
30 professional person in charge of the facility providing evaluation  
31 and treatment, or his or her designee, and, when appropriate, by the  
32 court. If the person so elects, the court shall immediately appoint  
33 an attorney to assist him or her.

34 (12) A person challenging his or her detention or his or her  
35 attorney shall have the right to designate and have the court appoint  
36 a reasonably available independent physician, physician assistant,  
37 psychiatric advanced registered nurse practitioner, or other  
38 professional person to examine the person detained, the results of  
39 which examination may be used in the proceeding. The person shall, if  
40 he or she is financially able, bear the cost of such expert

1 examination, otherwise such expert examination shall be at public  
2 expense.

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

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

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

13 **Sec. 5.** RCW 71.05.020 and 2018 c 305 s 1, 2018 c 291 s 1, and  
14 2018 c 201 s 3001 are each reenacted and amended to read as follows:

15 The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

17 (1) "Admission" or "admit" means a decision by a physician,  
18 physician assistant, or psychiatric advanced registered nurse  
19 practitioner that a person should be examined or treated as a patient  
20 in a hospital;

21 (2) "Alcoholism" means a disease, characterized by a dependency  
22 on alcoholic beverages, loss of control over the amount and  
23 circumstances of use, symptoms of tolerance, physiological or  
24 psychological withdrawal, or both, if use is reduced or discontinued,  
25 and impairment of health or disruption of social or economic  
26 functioning;

27 (3) "Antipsychotic medications" means that class of drugs  
28 primarily used to treat serious manifestations of mental illness  
29 associated with thought disorders, which includes, but is not limited  
30 to atypical antipsychotic medications;

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

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

38 (6) "Authority" means the Washington state health care authority;

39 (7) "Chemical dependency" means:

- 1 (a) Alcoholism;
- 2 (b) Drug addiction; or
- 3 (c) Dependence on alcohol and one or more psychoactive chemicals,  
4 as the context requires;
- 5 (8) "Chemical dependency professional" means a person certified  
6 as a chemical dependency professional by the department under chapter  
7 18.205 RCW;
- 8 (9) "Commitment" means the determination by a court that a person  
9 should be detained for a period of either evaluation or treatment, or  
10 both, in an inpatient or a less restrictive setting;
- 11 (10) "Conditional release" means a revocable modification of a  
12 commitment, which may be revoked upon violation of any of its terms;
- 13 (11) "Crisis stabilization unit" means a short-term facility or a  
14 portion of a facility licensed or certified by the department under  
15 RCW 71.24.035, such as an evaluation and treatment facility or a  
16 hospital, which has been designed to assess, diagnose, and treat  
17 individuals experiencing an acute crisis without the use of long-term  
18 hospitalization;
- 19 (12) "Custody" means involuntary detention under the provisions  
20 of this chapter or chapter 10.77 RCW, uninterrupted by any period of  
21 unconditional release from commitment from a facility providing  
22 involuntary care and treatment;
- 23 (13) "Department" means the department of health;
- 24 (14) "Designated crisis responder" means a mental health  
25 professional appointed by the county, an entity appointed by the  
26 county, or the behavioral health organization to perform the duties  
27 specified in this chapter;
- 28 (15) "Detention" or "detain" means the lawful confinement of a  
29 person, under the provisions of this chapter;
- 30 (16) "Developmental disabilities professional" means a person who  
31 has specialized training and three years of experience in directly  
32 treating or working with persons with developmental disabilities and  
33 is a psychiatrist, physician assistant working with a supervising  
34 psychiatrist, psychologist, psychiatric advanced registered nurse  
35 practitioner, or social worker, and such other developmental  
36 disabilities professionals as may be defined by rules adopted by the  
37 secretary of the department of social and health services;
- 38 (17) "Developmental disability" means that condition defined in  
39 RCW 71A.10.020(5);
- 40 (18) "Director" means the director of the authority;

1 (19) "Discharge" means the termination of hospital medical  
2 authority. The commitment may remain in place, be terminated, or be  
3 amended by court order;

4 (20) "Drug addiction" means a disease, characterized by a  
5 dependency on psychoactive chemicals, loss of control over the amount  
6 and circumstances of use, symptoms of tolerance, physiological or  
7 psychological withdrawal, or both, if use is reduced or discontinued,  
8 and impairment of health or disruption of social or economic  
9 functioning;

10 (21) "Evaluation and treatment facility" means any facility which  
11 can provide directly, or by direct arrangement with other public or  
12 private agencies, emergency evaluation and treatment, outpatient  
13 care, and timely and appropriate inpatient care to persons suffering  
14 from a mental disorder, and which is licensed or certified as such by  
15 the department. The authority may certify single beds as temporary  
16 evaluation and treatment beds under RCW 71.05.745. A physically  
17 separate and separately operated portion of a state hospital may be  
18 designated as an evaluation and treatment facility. A facility which  
19 is part of, or operated by, the department of social and health  
20 services or any federal agency will not require certification. No  
21 correctional institution or facility, or jail, shall be an evaluation  
22 and treatment facility within the meaning of this chapter;

23 (22) "Gravely disabled" means a condition in which a person, as a  
24 result of a mental disorder, or as a result of the use of alcohol or  
25 other psychoactive chemicals: (a) Is in danger of serious physical  
26 harm resulting from a failure to provide for his or her essential  
27 human needs of health or safety; or (b) manifests severe  
28 deterioration in routine functioning evidenced by repeated and  
29 escalating loss of cognitive or volitional control over his or her  
30 actions and is not receiving such care as is essential for his or her  
31 health or safety;

32 (23) "Habilitative services" means those services provided by  
33 program personnel to assist persons in acquiring and maintaining life  
34 skills and in raising their levels of physical, mental, social, and  
35 vocational functioning. Habilitative services include education,  
36 training for employment, and therapy. The habilitative process shall  
37 be undertaken with recognition of the risk to the public safety  
38 presented by the person being assisted as manifested by prior charged  
39 criminal conduct;

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

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

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

31           (27) "Individualized service plan" means a plan prepared by a  
32 developmental disabilities professional with other professionals as a  
33 team, for a person with developmental disabilities, which shall  
34 state:

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

37           (b) The conditions and strategies necessary to achieve the  
38 purposes of habilitation;

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

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

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

4 (f) Where relevant in light of past criminal behavior and due  
5 consideration for public safety, the criteria for proposed movement  
6 to less-restrictive settings, criteria for proposed eventual  
7 discharge or release, and a projected possible date for discharge or  
8 release; and

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

11 (28) "Information related to mental health services" means all  
12 information and records compiled, obtained, or maintained in the  
13 course of providing services to either voluntary or involuntary  
14 recipients of services by a mental health service provider. This may  
15 include documents of legal proceedings under this chapter or chapter  
16 71.34 or 10.77 RCW, or somatic health care information;

17 (29) "Intoxicated person" means a person whose mental or physical  
18 functioning is substantially impaired as a result of the use of  
19 alcohol or other psychoactive chemicals;

20 (30) "In need of assisted outpatient behavioral health treatment"  
21 means that a person, as a result of a mental disorder or substance  
22 use disorder: (a) Has been committed by a court to detention for  
23 involuntary behavioral health treatment during the preceding thirty-  
24 six months; (b) is unlikely to voluntarily participate in outpatient  
25 treatment without an order for less restrictive alternative  
26 treatment, based on a history of nonadherence with treatment or in  
27 view of the person's current behavior; (c) is likely to benefit from  
28 less restrictive alternative treatment; and (d) requires less  
29 restrictive alternative treatment to prevent a relapse,  
30 decompensation, or deterioration that is likely to result in the  
31 person presenting a likelihood of serious harm or the person becoming  
32 gravely disabled within a reasonably short period of time;

33 (31) "Judicial commitment" means a commitment by a court pursuant  
34 to the provisions of this chapter;

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

1 (33) "Less restrictive alternative treatment" means a program of  
2 individualized treatment in a less restrictive setting than inpatient  
3 treatment that includes the services described in RCW 71.05.585;

4 (34) "Licensed physician" means a person licensed to practice  
5 medicine or osteopathic medicine and surgery in the state of  
6 Washington;

7 (35) "Likelihood of serious harm" means:

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

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

19 (36) "Medical clearance" means a physician or other health care  
20 provider has determined that a person is medically stable and ready  
21 for referral to the designated crisis responder;

22 (37) "Mental disorder" means any organic, mental, or emotional  
23 impairment which has substantial adverse effects on a person's  
24 cognitive or volitional functions;

25 (38) "Mental health professional" means a psychiatrist,  
26 psychologist, physician assistant working with a supervising  
27 psychiatrist, psychiatric advanced registered nurse practitioner,  
28 psychiatric nurse, or social worker, and such other mental health  
29 professionals as may be defined by rules adopted by the secretary  
30 pursuant to the provisions of this chapter;

31 (39) "Mental health service provider" means a public or private  
32 agency that provides mental health services to persons with mental  
33 disorders or substance use disorders as defined under this section  
34 and receives funding from public sources. This includes, but is not  
35 limited to, hospitals licensed under chapter 70.41 RCW, evaluation  
36 and treatment facilities as defined in this section, community mental  
37 health service delivery systems or behavioral health programs as  
38 defined in RCW 71.24.025, facilities conducting competency  
39 evaluations and restoration under chapter 10.77 RCW, approved  
40 substance use disorder treatment programs as defined in this section,

1 secure detoxification facilities as defined in this section, and  
2 correctional facilities operated by state and local governments;

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

7 (41) "Physician assistant" means a person licensed as a physician  
8 assistant under chapter 18.57A or 18.71A RCW;

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

17 (43) "Professional person" means a mental health professional,  
18 chemical dependency professional, or designated crisis responder and  
19 shall also mean a physician, physician assistant, psychiatric  
20 advanced registered nurse practitioner, registered nurse, and such  
21 others as may be defined by rules adopted by the secretary pursuant  
22 to the provisions of this chapter;

23 (44) "Psychiatric advanced registered nurse practitioner" means a  
24 person who is licensed as an advanced registered nurse practitioner  
25 pursuant to chapter 18.79 RCW; and who is board certified in advanced  
26 practice psychiatric and mental health nursing;

27 (45) "Psychiatrist" means a person having a license as a  
28 physician and surgeon in this state who has in addition completed  
29 three years of graduate training in psychiatry in a program approved  
30 by the American medical association or the American osteopathic  
31 association and is certified or eligible to be certified by the  
32 American board of psychiatry and neurology;

33 (46) "Psychologist" means a person who has been licensed as a  
34 psychologist pursuant to chapter 18.83 RCW;

35 (47) "Public agency" means any evaluation and treatment facility  
36 or institution, secure detoxification facility, approved substance  
37 use disorder treatment program, or hospital which is conducted for,  
38 or includes a department or ward conducted for, the care and  
39 treatment of persons with mental illness, substance use disorders, or  
40 both mental illness and substance use disorders, if the agency is



1 operated directly by federal, state, county, or municipal government,  
2 or a combination of such governments;

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

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

7 (50) "Secretary" means the secretary of the department of health,  
8 or his or her designee;

9 (51) "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 licensed or certified as such by the department of health;

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

25 (53) "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 (54) "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 (55) "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 (56) "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 of social and health services, the department, the  
5 authority, behavioral health organizations and their staffs, and by  
6 treatment facilities. Treatment records include mental health  
7 information contained in a medical bill including but not limited to  
8 mental health drugs, a mental health diagnosis, provider name, and  
9 dates of service stemming from a medical service. Treatment records  
10 do not include notes or records maintained for personal use by a  
11 person providing treatment services for the department of social and  
12 health services, the department, the authority, behavioral health  
13 organizations, or a treatment facility if the notes or records are  
14 not available to others;

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

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

25 (59) "Electroconvulsant therapy" means a class of procedures  
26 performed under general anesthesia in which small electrical currents  
27 are passed through the brain, stimulating changes in brain chemistry  
28 which can quickly reverse symptoms of certain mental health  
29 conditions including, but not limited to, severe depression,  
30 treatment-resistant depression, severe mania, catatonia, and  
31 agitation and aggression in persons with dementia.

32 **Sec. 6.** RCW 71.34.355 and 2016 c 155 s 18 are each amended to  
33 read as follows:

34 Absent a risk to self or others, minors treated under this  
35 chapter have the following rights, which shall be prominently posted  
36 in the evaluation and treatment facility:

37 (1) To wear their own clothes and to keep and use personal  
38 possessions;

1 (2) To keep and be allowed to spend a reasonable sum of their own  
2 money for canteen expenses and small purchases;

3 (3) To have individual storage space for private use;

4 (4) To have visitors at reasonable times;

5 (5) To have reasonable access to a telephone, both to make and  
6 receive confidential calls;

7 (6) To have ready access to letter-writing materials, including  
8 stamps, and to send and receive uncensored correspondence through the  
9 mails;

10 (7) To discuss treatment plans and decisions with mental health  
11 professionals;

12 (8) To have the right to adequate care and individualized  
13 treatment;

14 (9) Not to consent to the performance of (~~electroconvulsive~~  
15 ~~treatment~~) electroconvulsant therapy or surgery, except emergency  
16 lifesaving surgery, upon him or her, and not to have (~~electro-~~  
17 ~~convulsive—treatment—or~~) nonemergency surgery (~~in—such~~  
18 ~~circumstance~~) unless ordered by a court pursuant to a judicial  
19 hearing in which the minor is present and represented by counsel, and  
20 the court shall appoint a psychiatrist, physician assistant,  
21 psychologist, psychiatric advanced registered nurse practitioner, or  
22 physician designated by the minor or the minor's counsel to testify  
23 on behalf of the minor. The minor's parent may exercise this right on  
24 the minor's behalf, and must be informed of any impending treatment;

25 (10) Not to have psychosurgery performed on him or her under any  
26 circumstances.

27 **Sec. 7.** RCW 71.34.370 and 1989 c 120 s 9 are each amended to  
28 read as follows:

29 For the purposes of administration of antipsychotic medication  
30 and (~~shock treatment~~) electroconvulsant therapy, the provisions of  
31 (~~chapter 120, Laws of 1989~~) RCW 71.05.215 and 71.05.217 apply to  
32 minors pursuant to chapter 71.34 RCW.

33 **Sec. 8.** RCW 71.34.020 and 2018 c 201 s 5002 are each amended to  
34 read as follows:

35 Unless the context clearly requires otherwise, the definitions in  
36 this section apply throughout this chapter.

37 (1) "Alcoholism" means a disease, characterized by a dependency  
38 on alcoholic beverages, loss of control over the amount and

1 circumstances of use, symptoms of tolerance, physiological or  
2 psychological withdrawal, or both, if use is reduced or discontinued,  
3 and impairment of health or disruption of social or economic  
4 functioning.

5 (2) "Approved substance use disorder treatment program" means a  
6 program for minors with substance use disorders provided by a  
7 treatment program licensed or certified by the department of health  
8 as meeting standards adopted under chapter 71.24 RCW.

9 (3) "Authority" means the Washington state health care authority.

10 (4) "Chemical dependency" means:

11 (a) Alcoholism;

12 (b) Drug addiction; or

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

15 (5) "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 (6) "Child psychiatrist" means a person having a license as a  
19 physician and surgeon in this state, who has had graduate training in  
20 child psychiatry in a program approved by the American Medical  
21 Association or the American Osteopathic Association, and who is board  
22 eligible or board certified in child psychiatry.

23 (7) "Children's mental health specialist" means:

24 (a) A mental health professional who has completed a minimum of  
25 one hundred actual hours, not quarter or semester hours, of  
26 specialized training devoted to the study of child development and  
27 the treatment of children; and

28 (b) A mental health professional who has the equivalent of one  
29 year of full-time experience in the treatment of children under the  
30 supervision of a children's mental health specialist.

31 (8) "Commitment" means a determination by a judge or court  
32 commissioner, made after a commitment hearing, that the minor is in  
33 need of inpatient diagnosis, evaluation, or treatment or that the  
34 minor is in need of less restrictive alternative treatment.

35 (9) "Department" means the department of social and health  
36 services.

37 (10) "Designated crisis responder" means a person designated by a  
38 behavioral health organization to perform the duties specified in  
39 this chapter.

40 (11) "Director" means the director of the authority.

1 (12) "Drug addiction" means a disease, characterized by a  
2 dependency on psychoactive chemicals, loss of control over the amount  
3 and circumstances of use, symptoms of tolerance, physiological or  
4 psychological withdrawal, or both, if use is reduced or discontinued,  
5 and impairment of health or disruption of social or economic  
6 functioning.

7 (13) "Evaluation and treatment facility" means a public or  
8 private facility or unit that is licensed or certified by the  
9 department of health to provide emergency, inpatient, residential, or  
10 outpatient mental health evaluation and treatment services for  
11 minors. A physically separate and separately-operated portion of a  
12 state hospital may be designated as an evaluation and treatment  
13 facility for minors. A facility which is part of or operated by the  
14 state or federal agency does not require licensure or certification.  
15 No correctional institution or facility, juvenile court detention  
16 facility, or jail may be an evaluation and treatment facility within  
17 the meaning of this chapter.

18 (14) "Evaluation and treatment program" means the total system of  
19 services and facilities coordinated and approved by a county or  
20 combination of counties for the evaluation and treatment of minors  
21 under this chapter.

22 (15) "Gravely disabled minor" means a minor who, as a result of a  
23 mental disorder, or as a result of the use of alcohol or other  
24 psychoactive chemicals, is in danger of serious physical harm  
25 resulting from a failure to provide for his or her essential human  
26 needs of health or safety, or manifests severe deterioration in  
27 routine functioning evidenced by repeated and escalating loss of  
28 cognitive or volitional control over his or her actions and is not  
29 receiving such care as is essential for his or her health or safety.

30 (16) "Inpatient treatment" means twenty-four-hour-per-day mental  
31 health care provided within a general hospital, psychiatric hospital,  
32 residential treatment facility licensed or certified by the  
33 department of health as an evaluation and treatment facility for  
34 minors, secure detoxification facility for minors, or approved  
35 substance use disorder treatment program for minors.

36 (17) "Intoxicated minor" means a minor whose mental or physical  
37 functioning is substantially impaired as a result of the use of  
38 alcohol or other psychoactive chemicals.

1 (18) "Less restrictive alternative" or "less restrictive setting"  
2 means outpatient treatment provided to a minor who is not residing in  
3 a facility providing inpatient treatment as defined in this chapter.

4 (19) "Likelihood of serious harm" means either: (a) A substantial  
5 risk that physical harm will be inflicted by an individual upon his  
6 or her own person, as evidenced by threats or attempts to commit  
7 suicide or inflict physical harm on oneself; (b) a substantial risk  
8 that physical harm will be inflicted by an individual upon another,  
9 as evidenced by behavior which has caused such harm or which places  
10 another person or persons in reasonable fear of sustaining such harm;  
11 or (c) a substantial risk that physical harm will be inflicted by an  
12 individual upon the property of others, as evidenced by behavior  
13 which has caused substantial loss or damage to the property of  
14 others.

15 (20) "Medical necessity" for inpatient care means a requested  
16 service which is reasonably calculated to: (a) Diagnose, correct,  
17 cure, or alleviate a mental disorder or substance use disorder; or  
18 (b) prevent the progression of a substance use disorder that  
19 endangers life or causes suffering and pain, or results in illness or  
20 infirmity or threatens to cause or aggravate a handicap, or causes  
21 physical deformity or malfunction, and there is no adequate less  
22 restrictive alternative available.

23 (21) "Mental disorder" means any organic, mental, or emotional  
24 impairment that has substantial adverse effects on an individual's  
25 cognitive or volitional functions. The presence of alcohol abuse,  
26 drug abuse, juvenile criminal history, antisocial behavior, or  
27 intellectual disabilities alone is insufficient to justify a finding  
28 of "mental disorder" within the meaning of this section.

29 (22) "Mental health professional" means a psychiatrist,  
30 psychiatric advanced registered nurse practitioner, physician  
31 assistant working with a supervising psychiatrist, psychologist,  
32 psychiatric nurse, or social worker, and such other mental health  
33 professionals as may be defined by rules adopted by the secretary of  
34 the department of health under this chapter.

35 (23) "Minor" means any person under the age of eighteen years.

36 (24) "Outpatient treatment" means any of the nonresidential  
37 services mandated under chapter 71.24 RCW and provided by licensed or  
38 certified service providers as identified by RCW 71.24.025.

39 (25) "Parent" means:

1 (a) A biological or adoptive parent who has legal custody of the  
2 child, including either parent if custody is shared under a joint  
3 custody agreement; or

4 (b) A person or agency judicially appointed as legal guardian or  
5 custodian of the child.

6 (26) "Private agency" means any person, partnership, corporation,  
7 or association that is not a public agency, whether or not financed  
8 in whole or in part by public funds, that constitutes an evaluation  
9 and treatment facility or private institution, or hospital, or  
10 approved substance use disorder treatment program, that is conducted  
11 for, or includes a distinct unit, floor, or ward conducted for, the  
12 care and treatment of persons with mental illness, substance use  
13 disorders, or both mental illness and substance use disorders.

14 (27) "Physician assistant" means a person licensed as a physician  
15 assistant under chapter 18.57A or 18.71A RCW.

16 (28) "Professional person in charge" or "professional person"  
17 means a physician, other mental health professional, or other person  
18 empowered by an evaluation and treatment facility, secure  
19 detoxification facility, or approved substance use disorder treatment  
20 program with authority to make admission and discharge decisions on  
21 behalf of that facility.

22 (29) "Psychiatric nurse" means a registered nurse who has  
23 experience in the direct treatment of persons who have a mental  
24 illness or who are emotionally disturbed, such experience gained  
25 under the supervision of a mental health professional.

26 (30) "Psychiatrist" means a person having a license as a  
27 physician in this state who has completed residency training in  
28 psychiatry in a program approved by the American Medical Association  
29 or the American Osteopathic Association, and is board eligible or  
30 board certified in psychiatry.

31 (31) "Psychologist" means a person licensed as a psychologist  
32 under chapter 18.83 RCW.

33 (32) "Public agency" means any evaluation and treatment facility  
34 or institution, or hospital, or approved substance use disorder  
35 treatment program that is conducted for, or includes a distinct unit,  
36 floor, or ward conducted for, the care and treatment of persons with  
37 mental illness, substance use disorders, or both mental illness and  
38 substance use disorders if the agency is operated directly by  
39 federal, state, county, or municipal government, or a combination of  
40 such governments.

1 (33) "Responsible other" means the minor, the minor's parent or  
2 estate, or any other person legally responsible for support of the  
3 minor.

4 (34) "Secretary" means the secretary of the department or  
5 secretary's designee.

6 (35) "Secure detoxification facility" means a facility operated  
7 by either a public or private agency or by the program of an agency  
8 that:

9 (a) Provides for intoxicated minors:

10 (i) Evaluation and assessment, provided by certified chemical  
11 dependency professionals;

12 (ii) Acute or subacute detoxification services; and

13 (iii) Discharge assistance provided by certified chemical  
14 dependency professionals, including facilitating transitions to  
15 appropriate voluntary or involuntary inpatient services or to less  
16 restrictive alternatives as appropriate for the minor;

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

19 (c) Is licensed or certified as such by the department of health.

20 (36) "Social worker" means a person with a master's or further  
21 advanced degree from a social work educational program accredited and  
22 approved as provided in RCW 18.320.010.

23 (37) "Start of initial detention" means the time of arrival of  
24 the minor at the first evaluation and treatment facility, secure  
25 detoxification facility, or approved substance use disorder treatment  
26 program offering inpatient treatment if the minor is being  
27 involuntarily detained at the time. With regard to voluntary  
28 patients, "start of initial detention" means the time at which the  
29 minor gives notice of intent to leave under the provisions of this  
30 chapter.

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

37 (39) "Electroconvulsant therapy" means a class of procedures  
38 performed under general anesthesia in which small electrical currents  
39 are passed through the brain, stimulating changes in brain chemistry  
40 which can quickly reverse symptoms of certain mental health



1 conditions including, but not limited to, severe depression,  
2 treatment-resistant depression, severe mania, catatonia, and  
3 agitation and aggression in persons with dementia.

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