

---

BILL REQUEST - CODE REVISER'S OFFICE

---

BILL REQ. #:

ATTY/TYPIST:

BRIEF DESCRIPTION: AN ACT Relating to addressing the suicide and addiction crisis among American Indians and Alaska Natives in this state by improving coordination between the health care authority, department of health, department of social and health services, behavioral health administrative services organizations, managed care organizations, tribes, and Indian health care providers; and providing requirements for recognition of tribal court involuntary commitment orders.

DRAFT

AN ACT Relating to addressing the suicide and addiction crisis among American Indians and Alaska Natives in this state by improving coordination between the health care authority, department of health, department of social and health services, behavioral health administrative services organizations, managed care organizations, tribes, and Indian health care providers; and providing requirements for recognition of tribal court involuntary commitment orders; amending RCW 71.24.035, 71.24.155, 71.05.020, 71.05.150, 71.05.201, 71.05.212; and providing effective dates.

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

### **Part 1**

**Sec. 1001.** RCW 71.24.035 and 2019 c 325 s 1006 are each amended to read as follows:

(1) The authority is designated as the state behavioral health authority which includes recognition as the single state authority for substance use disorders and state mental health authority.

(2) The director shall provide for public, client, tribal, and licensed or certified behavioral health agency participation in developing the state behavioral health program, developing related contracts, and any waiver request to the federal government under medicaid.

(3) The director shall provide for participation in developing the state behavioral health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state behavioral health program.

(4) The authority shall be designated as the behavioral health administrative services organization for a regional service area if a behavioral health administrative services organization fails to meet the authority's contracting requirements or refuses to exercise

the responsibilities under its contract or state law, until such time as a new behavioral health administrative services organization is designated.

(5) The director shall:

(a) Assure that any behavioral health administrative services organization, managed care organization, or community behavioral health program provides medically necessary services to medicaid recipients consistent with the state's medicaid state plan or federal waiver authorities, and nonmedicaid services consistent with priorities established by the authority;

(b) Develop contracts in a manner to ensure an adequate network of inpatient services, evaluation and treatment services, and facilities under chapter 71.05 RCW to ensure access to treatment, resource management services, and community support services;

(c) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including managed care contracts for behavioral health services, contracts entered into under RCW 74.09.522, and contracts with public and private agencies, organizations, and individuals to pay them for behavioral health services;

(d) Define administrative costs and ensure that the behavioral health administrative services organization does not exceed an administrative cost of ten percent of available funds;

(e) Establish, to the extent possible, a standardized auditing procedure which is designed to assure compliance with contractual agreements authorized by this chapter and minimizes paperwork requirements. The audit procedure shall focus on the outcomes of service as provided in RCW 71.24.435, 70.320.020, and 71.36.025;

(f) Develop and maintain an information system to be used by the state and behavioral health administrative services organizations and managed care organizations that includes a tracking method which allows the authority to identify behavioral health clients' participation in any behavioral health service or public program on

an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

(g) Monitor and audit behavioral health administrative services organizations as needed to assure compliance with contractual agreements authorized by this chapter;

(h) Monitor and audit access to behavioral health services for individuals eligible for medicaid who are not enrolled in a managed care organization;

(i) Adopt such rules as are necessary to implement the authority's responsibilities under this chapter;

(j) Administer or supervise the administration of the provisions relating to persons with substance use disorders and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(k) Require the behavioral health administrative services organizations and the managed care organizations to develop agreements with tribal, city, and county jails and the department of corrections to accept referrals for enrollment on behalf of a confined person, prior to the person's release; and

(l) Require behavioral health administrative services organizations and managed care organizations, as applicable, to provide services as identified in RCW 71.05.585 to individuals committed for involuntary commitment under less restrictive alternative court orders when:

(i) The individual is enrolled in the medicaid program; or

(ii) The individual is not enrolled in medicaid, does not have other insurance which can pay for the services, and the behavioral health administrative services organization has adequate available resources to provide the services.

(m) Coordinate with the centers for medicare and medicaid services to provide that behavioral health aide services are eligible for federal funding of up to one hundred percent.

(6) The director shall use available resources only for behavioral health administrative services organizations and managed care organizations, except:

(a) To the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act; or

(b) To incentivize improved performance with respect to the client outcomes established in RCW 71.24.435, 70.320.020, and 71.36.025, integration of behavioral health and medical services at the clinical level, and improved care coordination for individuals with complex care needs.

(7) Each behavioral health administrative services organization, managed care organization, and licensed or certified behavioral health agency shall file with the secretary of the department of health or the director, on request, such data, statistics, schedules, and information as the secretary of the department of health or the director reasonably requires. A behavioral health administrative services organization, managed care organization, or licensed or certified behavioral health agency which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be subject to the contractual remedies in RCW 74.09.871 or may have its service provider certification or license revoked or suspended.

(8) The superior court may restrain any behavioral health administrative services organization, managed care organization, or service provider from operating without a contract, certification, or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of

certification or license, and grant other relief required to enforce the provisions of this chapter.

(9) Upon petition by the secretary of the department of health or the director, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary of the department of health or the director authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any behavioral health administrative services organization, managed care organization, or service provider refusing to consent to inspection or examination by the authority.

(10) Notwithstanding the existence or pursuit of any other remedy, the secretary of the department of health or the director may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a behavioral health administrative services organization, managed care organization, or service provider without a contract, certification, or a license under this chapter.

(11) The authority shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(12) The authority, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities licensed under chapter 71.12 RCW or certified under chapter 71.05 RCW. The authority shall periodically share the results of its efforts with the appropriate committees of the senate and the house of representatives.

(13) The authority may:

(a) Plan, establish, and maintain substance use disorder prevention and substance use disorder treatment programs as necessary or desirable;

(b) Coordinate its activities and cooperate with behavioral programs in this and other states, and make contracts and other joint or cooperative arrangements with state, tribal, local, or private agencies in this and other states for behavioral health services and for the common advancement of substance use disorder programs;

(c) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(d) Keep records and engage in research and the gathering of relevant statistics; and

(e) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide substance use disorder treatment programs.

**Sec. 1002.** RCW 71.24.155 and 2019 c 325 s 1011 are each amended to read as follows:

Grants shall be made by the authority to behavioral health administrative services organizations, ~~((and))~~ managed care organizations for community behavioral health programs, and Indian health care providers who have community behavioral health programs totaling not less than ninety-five percent of available resources of which twelve percent will be allocated to the federally recognized tribes and Indian health care providers located within the state.

The authority may use up to forty percent of the remaining five percent to provide community demonstration projects, including early intervention or primary prevention programs for children, and the

remainder shall be for emergency needs and technical assistance under this chapter.

## **PART 2**

**Sec. 2001.** RCW 71.05.020 and 2019 c 446 s 2; 2019 c 444 s 16; 2019 c 325 s 3001 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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



(7) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

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

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

(10) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

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

(12) "Department" means the department of health;

(13) "Designated crisis responder" means a mental health professional appointed by the county, ~~((or))~~ an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider to perform the duties specified in this chapter;

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

(15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with

a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

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

(17) "Director" means the director of the authority;

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

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

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

(21) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol

or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

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

(23) "Hearing" means any proceeding conducted in open court. For purposes of this chapter, at any hearing the petitioner, the respondent, the witnesses, and the presiding judicial officer may be present and participate either in person or by video, as determined by the court. The term "video" as used herein shall include any functional equivalent. At any hearing conducted by video, the technology used must permit the judicial officer, counsel, all parties, and the witnesses to be able to see, hear, and speak, when authorized, during the hearing; to allow attorneys to use exhibits or other materials during the hearing; and to allow respondent's counsel to be in the same location as the respondent unless otherwise requested by the respondent or the respondent's counsel. Witnesses in a proceeding may also appear in court through other means, including telephonically, pursuant to the requirements of superior court civil rule 43. Notwithstanding the foregoing, the court, upon its own motion or upon a motion for good cause by any party, may require all parties and witnesses to participate in the hearing in person rather than by video. In ruling on any such

motion, the court may allow in-person or video testimony; and the court may consider, among other things, whether the respondent's alleged mental illness affects the respondent's ability to perceive or participate in the proceeding by video;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(34) "Likelihood of serious harm" means:

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

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

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

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

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

(38) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders or substance use disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community

mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure withdrawal management and stabilization facilities as defined in this section, and correctional facilities operated by state and local governments;

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

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

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

(42) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

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

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

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

(46) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

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

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

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

(50) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:



(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

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

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

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

(54) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(55) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting

attorney, or defense counsel acting within the scope of therapeutic court duties;

(56) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

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

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

**Sec. 2002.** RCW 71.05.150 and 2019 c 446 s 4 are each amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, substance

use disorder, or both presents a likelihood of serious harm or is gravely disabled, or that a person is in need of assisted outpatient behavioral health treatment; the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient treatment, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention under this section or a petition for involuntary outpatient behavioral health treatment under RCW 71.05.148. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, triage facility, or approved substance use disorder treatment program.

(2) (a) An order to detain a person with a mental disorder to a designated evaluation and treatment facility, or to detain a person with a substance use disorder to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, for not more than a seventy-two-hour evaluation and treatment period may be issued by a judge of the superior court upon request of a designated crisis responder, subject to (d) of this subsection, whenever it appears to the satisfaction of a judge of the superior court:

- (i) That there is probable cause to support the petition; and
- (ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(d) A court may not issue an order to detain a person to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program unless there is an available secure withdrawal management and stabilization facility or approved substance use disorder treatment program that has adequate space for the person.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

(5) An Indian tribe shall have jurisdiction exclusive to the state as to any involuntary commitment of an American Indian or Alaska Native to an evaluation and treatment facility located within the boundaries of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, or the tribe has expressly declined to exercise its exclusive jurisdiction.

(6) Tribal court orders for involuntary commitment shall be recognized and enforced in accordance with superior court civil rule 82.5.

(7) If a designated crisis responder performs an investigation and evaluation under RCW 71.05.150(1) of an American Indian or Alaska Native, the designated crisis responder shall make reasonable efforts to inform, when applicable and with consent, the American Indian or Alaska Native's Indian health care provider regarding whether or not a petition for initial detention or involuntary outpatient treatment will be filed under RCW 71.05.150.

(8) The authority shall provide a report on psychiatric treatment and evaluation and bed utilization for American Indians and Alaska Natives. The report shall be available for review by the tribes, urban Indian health programs, and the American Indian health commission for Washington state.

(9) Indian health care providers shall be included in any bed tracking system created by the authority.

**Sec. 2003** RCW 71.05.150 and 2019 c 446 s 5 are each amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as a result of a mental disorder, substance use disorder, or both presents a likelihood of serious harm or is gravely disabled, or that a person is in need of assisted outpatient behavioral health treatment; the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention or involuntary outpatient treatment, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention under this section or a petition for involuntary outpatient behavioral health treatment under RCW 71.05.148. Before filing the petition, the designated crisis responder must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility, crisis stabilization unit, triage facility, or approved substance use disorder treatment program.

(2) (a) An order to detain a person with a mental disorder to a designated evaluation and treatment facility, or to detain a person with a substance use disorder to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program, for not more than a seventy-two-hour evaluation and treatment period may be issued by a judge of the superior court upon request of a designated crisis responder whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and  
(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the

court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated crisis responder shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved

substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

(5) An Indian tribe shall have jurisdiction exclusive to the state as to any involuntary commitment of an American Indian or Alaska Native to an evaluation and treatment facility located within the boundaries of that tribe, except where such jurisdiction is otherwise vested in the state by existing federal law.

(6) Tribal court orders for involuntary commitment shall be recognized and enforced in accordance with superior court civil rule 82.5.

(7) If a designated crisis responder performs an investigation and evaluation under RCW 71.05.150(1) of an American Indian or Alaska Native, the designated crisis responder shall make reasonable efforts to inform, when applicable, the American Indian or Alaska Native's Indian health care provider regarding whether or not a petition for initial detention or involuntary outpatient treatment will be filed under RCW 71.05.150.

(8) The authority shall provide a report on psychiatric treatment and evaluation and bed utilization for American Indians and Alaska Natives. The report shall be available for review by the tribes, urban Indian health programs, and the American Indian health commission for Washington state.

(9) Indian health care providers shall be included in any bed tracking system created by the authority.

**Sec. 2004.** RCW 71.05.201 and 2018 c 291 s 11 are each amended to read as follows:

(1) If a designated crisis responder decides not to detain a person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since a designated crisis



responder received a request for investigation and the designated crisis responder has not taken action to have the person detained, an immediate family member or guardian or conservator of the person, or a federally recognized Indian tribe if the person is a member of such tribe, may petition the superior court for the person's initial detention.

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

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

(b) The petition must contain:

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

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

(4) The court shall, within one judicial day, review the petition to determine whether the petition raises sufficient evidence to support the allegation. If the court so finds, it shall provide a copy of the petition to the designated crisis responder agency with an order for the agency to provide the court, within one judicial day, with a written sworn statement describing the basis for the decision not to seek initial detention and a copy of all

information material to the designated crisis responder's current decision.

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

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

(7) The court must issue a final ruling on the petition within five judicial days after it is filed. After reviewing all of the information provided to the court, the court may enter an order for initial detention or an order instructing the designated crisis responder to file a petition for assisted outpatient behavioral health treatment if the court finds that: (a) There is probable cause to support a petition for detention or assisted outpatient behavioral health treatment; and (b) the person has refused or failed to accept appropriate evaluation and treatment voluntarily. The court shall transmit its final decision to the petitioner.

(8) If the court enters an order for initial detention, it shall provide the order to the designated crisis responder agency and issue a written order for apprehension of the person by a peace officer for delivery of the person to a facility or emergency room determined by the designated crisis responder. The designated crisis responder agency serving the jurisdiction of the court must collaborate and coordinate with law enforcement regarding apprehensions and detentions under this subsection, including sharing of information relating to risk and which would assist in locating the person. A person may not be detained to jail pursuant to a written order issued under this subsection. An order for detention under this section should contain the advisement of rights which the person would receive if the person were detained by a

designated crisis responder. An order for initial detention under this section expires one hundred eighty days from issuance.

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

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

**Sec. 2005.** RCW 71.05.212 and 2018 c 291 s 13 are each amended to read as follows:

(1) Whenever a designated crisis responder or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:

(a) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW;

(b) Historical behavior, including history of one or more violent acts;

(c) Prior determinations of incompetency or insanity under chapter 10.77 RCW; and

(d) Prior commitments under this chapter.

(2) Credible witnesses may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person. If the designated crisis responder relies upon information from a credible witness in reaching his or her decision to detain the individual, then he or she must provide contact information for any such witness to the prosecutor. The designated crisis responder or prosecutor shall provide notice of the date, time, and location of the probable cause hearing to such a witness.

(3) Symptoms and behavior of the respondent which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm, or a finding that the person is in need of assisted outpatient behavioral health treatment, when:

(a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;

(b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and

(c) Without treatment, the continued deterioration of the respondent is probable.

(4) When conducting an evaluation for offenders identified under RCW 72.09.370, the designated crisis responder or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement.

(5) The authority, in consultation with tribes and coordination with Indian health care providers and the American Indian Health Commission for Washington State, shall establish written guidelines for conducting culturally appropriate evaluations of American Indian or Alaska Natives. The authority, in coordination with the American Indian Health Commission for Washington, shall provide annual training to all designated crisis responders on these guidelines.

**Sec. 2006.** RCW 71.05.435(1) and 2019 c 446 s 26 are each amended to read as follows:

(1) Whenever a person who is the subject of an involuntary commitment order under this chapter is discharged from an evaluation and treatment facility, state hospital, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program providing involuntary treatment services, the

entity discharging the person shall provide notice of the person's discharge to the designated crisis responder office responsible for the initial commitment (which may be a federally recognized Indian tribe or other Indian health care provider if the designated crisis responder is appointed by the authority) and the designated crisis responder office that serves the county in which the person is expected to reside. The entity discharging the person must also provide these offices with a copy of any less restrictive order or conditional release order entered in conjunction with the discharge of the person, unless the entity discharging the person has entered into a memorandum of understanding obligating another entity to provide these documents.

(2) The notice and documents referred to in subsection (1) of this section shall be provided as soon as possible and no later than one business day following the discharge of the person. Notice is not required under this section if the discharge is for the purpose of transferring the person for continued detention and treatment under this chapter at another treatment facility.

(3) The authority shall maintain and make available an updated list of contact information for designated crisis responder offices around the state.

### **PART 3**

NEW SECTION. Sec. 3001. Sec. 2002 of this act expires July, 1, 2026.

NEW SECTION. Sec. 3002. Sec. 2004 of this takes effect July, 1, 2026.

NEW SECTION. Sec. 3003. Sec. 1002 of this takes effect July, 1, 2021.

--- END ---