

No. 20-1287

In the Supreme Court of the United States

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RECOVERY INNOVATIONS, INC.; SAMI FRENCH;  
JENNIFER CLINGENPEEL; AND VASANT HALARNAKAR,

Petitioners,

v.

KENNETH RAWSON,

Respondent.

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On Petition for Writ of Certiorari  
to the United States Court of Appeals for the Ninth Circuit

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RESPONDENT'S APPENDIX

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**IN RE the DETENTION OF K.R., Appellant.**

195 Wash.App. 843  
Court of Appeals of Washington, Division 2.  
No. 47320–8–II  
|  
August 16, 2016

Lee, J.

¶ 1 K.R.<sup>1</sup> was detained by a sheriff’s deputy at a bank after allegedly making comments to a teller the previous day that referenced a relatively recent mass shooting in Colorado. The State filed a petition to detain K.R. and for a 14–day involuntary treatment. After a probable cause hearing the following day, the superior court found that K.R. was gravely disabled and presented a likelihood of serious harm to others, granted the petition and entered a 14 day commitment order.

¶ 2 K.R. appeals, arguing that he was denied procedural due process because the mental health professional did not interview the complaining witnesses or examining physicians.<sup>2</sup> We hold that K.R.’s detention was improper because the Designated Mental Health Professional (DMHP) failed to consult an examining emergency room physician as required by RCW 71.05.154. Therefore, we reverse the

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<sup>1</sup> Under General Order 1992–3 of Division II, *In re the Matter of All Appeals of Persons Subject to Involuntary commitment proceedings, RCW 71.05*, (Wash. Ct. App.), available at: [http://www.courts.wa.gov/appellate\\_trial\\_courts/](http://www.courts.wa.gov/appellate_trial_courts/), an appeal from an involuntary commitment proceeding will use the subject’s initials instead of his or her name.

<sup>2</sup> K.R. also argues, and the State concedes, that this appeal is not moot. We accept the State’s concession and agree the appeal is not moot. *In re Det. of M.K.*, 168 Wash.App. 621, 626, 279 P.3d 897 (2012) (holding that release from detention does not render an appeal moot where collateral consequences, such as the consideration of the commitment order at future commitment hearings, result from the detention).

superior court's commitment order.<sup>3</sup>

## FACTS

### A. K.R.'s Actions the Bank

¶ 3 K.R. went to a bank in Vancouver on March 4, 2015, to verify that his VA benefits had been direct-deposited into his account as requested. K.R. spoke with a teller, Jason, who informed K.R. that the VA benefits had not been deposited in K.R.'s account. K.R. left and returned to the bank later that day with a completed direct-deposit form. Jason's shift had ended, so K.R. spoke with another teller, Dijari.

¶ 4 K.R. asked Dijari "about the bank errors and why certain things ha[d] happened with [his] accounts" recently and "what she thought about that." Verbatim Transcript of Proceedings (VTP) at 25. K.R. then said to Dijari, "I wonder if there is, like, people that go around messing with somebody and that is what may be cause [sic] the—the shooting in Colorado." VTP at 27. Dijari responded that she did not know the causes and the conversation stopped.

¶ 5 Dijari and K.R. decided that K.R. should come back the next day to complete the transaction with Jason. When K.R. arrived at the bank the next day, Dijari met him and told him Jason was on the phone and would be with K.R.

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<sup>3</sup> K.R. also argued that (1) he was denied procedural due process because (a) he was not told his initial detainment was pursuant to RCW 71.05.153 and (b) no 14-day petition was filed; (2) the superior court abused its discretion in admitting testimony over his hearsay objection; and (3) the superior court's findings of fact did not support its conclusions that he was gravely disabled or that he presented a likelihood of serious harm to others. Because we reverse the commitment order, we do not address the remainder of the issues raised on appeal.

shortly. When K.R. sat down to wait, a sheriff's deputy entered the bank and detained K.R.

¶ 6 K.R. had a concealed pistol license and was carrying a handgun at the time. K.R. did not display or threaten anyone with his handgun.

#### B. K.R.'s Detention

¶ 7 K.R. was transported by the sheriff's deputy first to a hospital in Vancouver, and then transferred to Recovery Innovations in Lakewood. There, Al Padilla, a DMHP, consulted with a nurse (RN) and a certified rehabilitation counselor (CRC), spoke with K.R., and reviewed K.R.'s chart. The record does not reflect that the DMHP consulted with a physician.

¶ 8 On March 9, the DMHP filed with the superior court a Petition for Initial Detention, a Statement of Rights, and Authorization and Notice of Detention. In the petition, the DMHP concluded that K.R. suffered from "a mental disorder characterized by impaired thought content, impaired cognitive functioning, impaired insight and impaired judgement." Clerk's Papers (CP) at 2.

#### C. K.R.'s Fourteen Day Involuntary Treatment Petition and Order

¶ 9 Also on March 9, the DMHP filed a Petition for Fourteen Day Involuntary Treatment. The probable cause hearing for the 14-day commitment was held on March 10.

¶ 10 The superior court found that K.R. "suffer[s] from a mental disorder," and "that you [K.R.] are a likelihood of serious harm to others." VTP at 39. The superior court concluded that "the Respondent shall be detained for involuntary

treatment,” “Respondent presents a likelihood of serious harm to others,” and a less restrictive alternative was not in the best interests of K.R. or others. CP at 18 (some boldface omitted). The superior court granted the petition and ordered a fourteen day commitment. K.R. appeals.

## ANALYSIS

¶ 11 K.R. argues that his detention was improper because the DMHP’s investigation was not sufficient to comply with the standards set forth in RCW 71.05.150(1) and RCW 71.05.154. K.R. acknowledges the DMHP’s documentation of the observations of a RN and CRC, but assigns error to the DMHP’s failure to consult with an examining physician. We hold that K.R.’s detention was improper because the DMHP did not consult with an examining physician as required by RCW 71.05.154.

¶ 12 The State does not dispute that the DMHP failed to consult a physician or that RCW 71.05.154 requires a consultation with a physician. But the State contends that the DMHP’s consultation with an RN and CRC instead of with a physician is a “technical irregularity which the new language of [RCW 71.05.010] requires the court not to be focused upon.”<sup>4</sup> Br. of Resp’t at 8. We disagree.

¶ 13 RCW 71.05.154 states:

A designated mental health professional conducting an evaluation of a person under RCW 71.05.150 or 71.05.153 *must consult with any examining emergency room physician* regarding the physician’s

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<sup>4</sup> In its briefing, the State cites RCW 75.05.010. Our review of the briefing and the statutes lead us to presume the State meant to cite RCW 71.05.010.

observations and opinions relating to the person's condition, and whether, in the view of the physician, detention is appropriate. The designated mental health professional shall take serious consideration of observations and opinions by examining emergency room physicians in determining whether detention under this chapter is appropriate. *The designated mental health professional must document the consultation with an examining emergency room physician*, including the physician's observations or opinions regarding whether detention of the person is appropriate.

(Emphasis added). In relevant part, RCW 71.05.010 requires courts to focus on the merits of the petition, except where the requirements of the chapter have been totally disregarded. *In re Det. of C.W.*, 147 Wash.2d 259, 279, 53 P.3d 979 (2002); RCW 71.05.010(2). Here, the requirements of RCW 71.05.154 were totally disregarded.

¶ 14 RCW 71.05.154 explicitly requires the DMHP to consult with any examining emergency room physician on whether detention is appropriate. First, the statute requires that the DMHP “*must* consult with any examining emergency room *physician* regarding the *physician's* observations and opinions.” RCW 71.05.154 (emphasis added). Here, there is no evidence in the record indicating that the DMHP consulted with any examining physician.

¶ 15 Second, the statute requires that the DMHP “*shall* take serious consideration of observations and opinions by examining emergency room *physicians* in determining whether detention ... is appropriate.” RCW 71.05.154 (emphasis added). Here, there is no evidence in the record indicating that the DMHP considered any observations or opinions of any examining physician.

¶ 16 Third, the statute requires that the DMHP “*must* document the

consultation with an examining ... *physician*, including the *physician's* observations or opinions regarding whether detention ... is appropriate.” RCW 71.05.154 (emphasis added). Here, the record is clear that the DMHP did not document any consultation with any examining physician.

¶ 17 Because of the DMHP’s total disregard for the statutory requirements, we hold K.R.’s commitment was improper.<sup>5</sup> Therefore, we reverse the superior court’s commitment order.

We concur:

Worswick, P.J.  
Melnick, J.

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<sup>5</sup> At oral argument, the State argued that because RCW 71.05.153 allows a person to be taken to places other than a hospital, a DMHP is not actually required to consult with an examining physician. The State’s argument ignores the explicit requirement in RCW 71.05.154 that a DMHP “*must* consult with any examining emergency room physician” and that the DMHP “*must* document the consultation with an examining emergency room physician, including the physician’s observations or opinions regarding whether detention of the person is appropriate.” RCW 71.05.154 (emphasis added).



## **PROVISIONS OF RCW CHAPTER 71.05 IN FORCE IN MARCH-APRIL 2015**

### **RCW 71.05.010, as amended by Laws of 1998 Chapter 297 section 2:**

The provisions of this chapter are intended by the legislature:

- (1) To prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;
- (2) To provide prompt evaluation and timely and appropriate treatment of persons with serious mental disorders;
- (3) To safeguard individual rights;
- (4) To provide continuity of care for persons with serious mental disorders;
- (5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;
- (6) To encourage, whenever appropriate, that services be provided within the community;
- (7) To protect the public safety.

### **RCW 71.05.020, as amended by Laws of 2014 Chapter 225, section 79:**

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 or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;
- (2) "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;
- (3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;
- (4) "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;

- (5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;
- (6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, 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;
- (7) "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;
- (8) "Department" means the department of social and health services;
- (9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;
- (10) "Designated crisis responder" means a mental health professional appointed by the county or the behavioral health organization to perform the duties specified in this chapter;
- (11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;
- (12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;
- (13) "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, 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;
- (14) "Developmental disability" means that condition defined in RCW 71A.10.020(4);
- (15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;
- (16) "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 certified as such by the department. 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 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;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (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;

(18) "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;

(19) "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 or in confinement as a result of a criminal conviction;

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

(21) "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;

(22) "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;

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

(24) "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 service providers under RCW 71.05.130;

(25) "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;

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

(27) "Mental health professional" means a psychiatrist, psychologist, 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;

(28) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental 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 mental health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, and correctional facilities operated by state and local governments;

(29) "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;

(30) "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, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(31) "Professional person" means a mental health professional and shall also mean a physician, 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;

(32) "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;

(33) "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;

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

(35) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(36) "Registration records" include all the records of the department, behavioral health organizations, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

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

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

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

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

(41) "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;

(42) "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;

(43) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, 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 of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(44) "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, by behavioral health 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, behavioral health organizations, or a treatment facility if the notes or records are not available to others;

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

**RCW 71.05.153, as amended by Laws 2011 Chapter 305 section 8:**

(1) When a designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a crisis stabilization unit, an evaluation and treatment facility, or the emergency department of a local hospital under the following circumstances:

(a) Pursuant to subsection (1) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, or the emergency department of a local hospital by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the designated mental health professional must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. If the individual is released to the community, the mental health provider shall inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and provided contact information to the provider.

**RCW 71.05.170, as amended by Laws 2000 Chapter 94 section 5:**

Whenever the county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit, detain, transfer, or ) discharge such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the county designated mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention. The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW.

**RCW 71.05.210, as amended by Laws of 2009 Chapter 217 section 1:**

Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility

(1) shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by

- (a) a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW and a mental health professional,
- (b) an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional, or
- (c) a licensed physician and a psychiatric advanced registered nurse practitioner and

(2) shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.217, the individual may refuse psychiatric medications, but may not refuse:

- (a) Any other medication previously prescribed by a person licensed under Title 18 RCW; or
- (b) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person



presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the mental health professional and licensed physician or psychiatric advanced registered nurse practitioner determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020. An evaluation and treatment center admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

**RCW 71.05.230, as amended by Laws of 2011 Chapter 343 section 9:**

A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. A petition may only be filed if the following conditions are met:

- (1) The professional staff of the agency or facility providing valuation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and
- (2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and
- (3) The facility providing intensive treatment is certified to provide such treatment by the department; and
- (4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by:

- (a) Two physicians;
  - (b) One physician and a mental health professional;
  - (c) Two psychiatric advanced registered nurse practitioners;
  - (d) One psychiatric advanced registered nurse practitioner and a mental health professional; or
  - (e) A physician and a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and
- (5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and
- (6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and
- (7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed; and
- (8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and
- (9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility.

**RCW 71.05.280, as amended by Laws of 2013 Chapter 289 section 4:**

At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

- (1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm; or
- (2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or
- (3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.086(4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts.
  - (a) In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime;
  - (b) For any person subject to commitment under this subsection where the charge underlying the finding of incompetence is for a felony classified as violent under RCW 9.94A.030, the court shall determine whether the acts the person committed constitute a violent offense under RCW 9.94A.030; or
- (4) Such person is gravely disabled.

**RCW 71.05.290, as amended by Laws of 2009 Chapter 217 section 3:**

- (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the designated mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.
- (2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by:
  - (a) Two examining physicians;
  - (b) One examining physician and examining mental health professional;

- (c) Two psychiatric advanced registered nurse practitioners;
- (d) One psychiatric advanced registered nurse practitioner and a mental health professional; or
- (e) An examining physician and an examining psychiatric advanced registered nurse practitioner. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

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

**RCW 71.05.310, as amended by Laws of 2012 Chapter 256 section 8:**

The court shall conduct a hearing on the petition for ninety-day treatment within five judicial days of the first court appearance after the probable cause hearing, or within ten judicial days for a petition filed under RCW 71.05.280(3). The court may continue the hearing for good cause upon the written request of the person named in the petition or the person's attorney. The court may continue for good cause the hearing on a petition filed under RCW 71.05.280(3) upon written request by the person named in the petition, the person's attorney, or the petitioner. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his or her attorney, or the petitioner in the case of a petition filed under RCW 71.05.280(3), the detained person shall be released.

**RCW 71.05.320, as amended by Laws of 2013 Chapter 289 section 5:**

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

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

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

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

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

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when

considering the person's life history, progress in treatment, and the public safety. (ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled.

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

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

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

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

(c) Outpatient treatment that would be provided under a less restrictive treatment order is necessary 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.

(5) A new petition for involuntary treatment filed under subsection (3) or (4) of this section shall be filed and heard in the superior court of the county of the facility

which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

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

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

**RCW 71.05.510, as amended by Laws of 1974 ex. sess Chapter 145 section 30:**

Any individual who knowingly, wilfully, or through gross negligence violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. It shall not be a prerequisite to an action under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general damages.