
SENATE BILL 6109

State of Washington

66th Legislature

2020 Regular Session

By Senator O'Ban

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1 AN ACT Relating to ensuring persons with serious mental illness
2 and substance use disorders receive proper care and assistance;
3 adding a new chapter to Title 11 RCW; creating new sections;
4 providing an effective date; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that there are a
7 significant number of individuals in the state who are unable to care
8 for themselves due to a mental health or substance use disorder.
9 Current law, including the involuntary treatment act, allows the
10 state to intervene and help those with mental health and substance
11 use disorders, but only if they are found likely to cause serious
12 harm or to be dangerous. This leaves those who are unable to care for
13 themselves, but who are not imminently dangerous, without intervening
14 state help.

15 The legislature intends to create a pilot program in the three
16 largest counties of the state that allows the counties to intervene
17 and help those who are not found to be imminently dangerous but who
18 are unable to care for themselves due to a mental health or substance
19 use disorder. The legislature intends to provide services and help to
20 these persons in the least restrictive and most clinically
21 appropriate way possible.

1 NEW SECTION. **Sec. 2.** (1) A pilot program is hereby established
2 in the three largest counties in Washington for the appointment of
3 court appointed resource executor (CARE) officers for certain persons
4 with a serious mental illness or a substance use disorder.

5 (2) Prior to a county participating in this pilot program, the
6 health care authority must determine that the county has:

7 (a) Developed a plan to implement this pilot program in
8 consultation with a behavioral health provider, a provider of
9 supportive housing services, and law enforcement; and

10 (b) Presented before the county commission on the plan and on
11 available resources for the implementation of this pilot program.

12 (3) County authorization of this pilot program must be
13 conditioned on the county determining that the following services are
14 available in sufficient quantities with adequate resources and
15 funding levels, taking into account state-provided funding for this
16 pilot program, to serve the identified population:

17 (a) Supportive community housing that provides wraparound
18 services, with adequate beds available;

19 (b) County CARE officers trained on the specifics of how to
20 assess and evaluate individuals under this pilot program;

21 (c) Outpatient mental health counseling;

22 (d) Coordination and access to medications;

23 (e) Psychiatric and psychological services;

24 (f) Substance use disorder services;

25 (g) Vocational rehabilitation;

26 (h) Veterans' services;

27 (i) Family support and consultation services;

28 (j) A service planning and delivery process that includes the
29 following:

30 (i) Services that consider culture, linguistics, gender, and age;

31 (ii) Services to meet the needs of persons who are physically
32 disabled;

33 (iii) Services to meet the special needs of older adults;

34 (iv) Family support and consultation services, parenting support
35 and consultation services, and peer support or self-help group
36 support, if appropriate;

37 (v) Services to employ psychosocial rehabilitation and recovery
38 principles;

1 (vi) Psychiatric and psychological services that are integrated
2 with other services and for psychiatric and psychological
3 collaboration in overall service planning; and

4 (vii) Housing for clients that is immediate, transitional, or
5 permanent, or all of these; and

6 (k) An individual personal services plan that ensures that a
7 person subject to an executorship pursuant to this chapter receives
8 age-appropriate, disability-appropriate, and culturally appropriate
9 services, to the extent feasible, that are designed to enable those
10 persons to do all of the following:

11 (i) Live in the most independent, least restrictive housing
12 feasible in the local community, and, for clients with children, to
13 live in a supportive housing environment that strives for
14 reunification with their children or assists clients in maintaining
15 custody of their children as is appropriate;

16 (ii) Engage in the highest level of work or productive activity
17 appropriate to their abilities and experience;

18 (iii) Create and maintain a support system consisting of friends,
19 family, and participation in community activities;

20 (iv) Access an appropriate level of academic education or
21 vocational training;

22 (v) Obtain an adequate income;

23 (vi) Self-manage their illnesses and exert as much control as
24 possible over both the day-to-day and long-term decisions that affect
25 their lives;

26 (vii) Access necessary physical health benefits and care and
27 maintain the best possible physical health; and

28 (viii) Reduce or eliminate the distress caused by the symptoms of
29 mental illness.

30 (4) The county shall not seek to subject any person to this
31 chapter unless there is funding and available resources to provide
32 all of the services set forth in this chapter.

33 NEW SECTION. **Sec. 3.** (1) In the three largest counties in
34 Washington, the county may request an executorship of a person who is
35 incapable of caring for the person's own health and well-being due to
36 a serious mental illness or substance use disorder, as evidenced by
37 frequent detention for evaluation and treatment under chapter 71.05
38 RCW. The procedure for establishing, administering, and terminating
39 an executorship under this chapter is the same as establishing,

1 administering, and terminating a conservatorship, as provided for in
2 chapter 11.88 RCW, except as follows:

3 (a) The court may appoint a CARE officer in the county of
4 residence of the individual subject to the executorship and the
5 person to serve as the CARE officer if the person requesting the
6 appointment establishes, and the court makes an express finding, that
7 it is necessary for the protection of the proposed individual subject
8 to the executorship and the granting of the executorship is the least
9 restrictive alternative needed for the protection of the individual
10 subject to the executorship.

11 (b) The proposed individual subject to the executorship has the
12 right to demand a hearing on the issue of whether the individual
13 meets the criteria for the appointment of a CARE officer under this
14 chapter.

15 (2) An executorship pursuant to this chapter must not be
16 established if a guardianship or conservatorship otherwise exists
17 under existing law, provided the guardian or conservator of the
18 individual subject to the guardianship or conservatorship has the
19 authority to exercise the provisions of this chapter.

20 NEW SECTION. **Sec. 4.** For purposes of this chapter:

21 (1) "Court appointed resource executor" or "CARE officer" means a
22 court appointed person that makes decisions with respect to the
23 personal affairs of an individual who meets the criteria of this
24 chapter. The scope of the authority of the court appointed resource
25 executor shall be defined by the court.

26 (2) "Evaluation" consists of multidisciplinary professional
27 analyses of an individual's medical, psychological, educational,
28 social, financial, and legal conditions as they may appear to
29 constitute a problem. Persons providing evaluation services must be
30 properly qualified professionals and may be full-time employees of an
31 agency providing face-to-face, which includes telehealth, evaluation
32 services or may be part-time employees or may be employed on a
33 contractual basis.

34 (3) "Executorship" refers to a legal arrangement where a person
35 is subject to an individual personal service plan that is being
36 fulfilled by a CARE officer.

37 (4) "Frequent detention for evaluation and treatment" means five
38 or more detentions for evaluation and treatment under chapter 71.05
39 RCW in the preceding twelve months.

1 (5) "Intensive treatment" consists of such hospital and other
2 services as may be indicated. Intensive treatment must be provided by
3 properly qualified professionals and carried out in certified and
4 licensed facilities. Intensive treatment may be provided in hospitals
5 of the United States government by properly qualified professionals.
6 This chapter does not prohibit an intensive treatment facility from
7 also providing seventy-two hour evaluation and treatment.

8 (6) "Pilot program" means the pilot program created in section 2
9 of this act.

10 (7) "Three largest counties in Washington" means the three
11 counties of Washington with the highest population on the effective
12 date of this section.

13 NEW SECTION. **Sec. 5.** (1) The purpose of executorship under this
14 chapter is to provide the least restrictive and most clinically
15 appropriate alternative needed for the protection of a person who is
16 incapable of caring for the person's own health and well-being due to
17 a serious mental illness and substance use disorder, as evidenced by
18 frequent detention for evaluation and treatment. If the court
19 determines that the person needs to be moved from the person's
20 current residence, the placement must be in supportive community
21 housing that provides appropriate wraparound services, such as on-
22 site physical and behavioral health services, unless the court, with
23 good cause, determines that such a placement is not sufficient for
24 the protection of that person.

25 (2) A county CARE officer shall conduct an executorship
26 investigation when recommended by any of the following:

27 (a) The county sheriff may recommend an evaluation for an
28 executorship to the officer providing executorship investigations in
29 the county of residence of the person if the sheriff determines that
30 a person detained in a jail is incapable of caring for the person's
31 own health and well-being due to a serious mental illness and
32 substance use disorder, as evidenced by frequent detention for
33 evaluation and treatment. The county sheriff may delegate this
34 authority to make a determination and recommendation to the health
35 care service providers in the county jail.

36 (b) The director of a county mental health department or a county
37 department of public social services may recommend an evaluation for
38 an executorship to the officer providing executorship investigations
39 in the county of residence of the person if the director determines

1 that a person is incapable of caring for the person's own health and
2 well-being due to a serious mental illness and substance use
3 disorder, as evidenced by frequent detention for evaluation and
4 treatment.

5 (c) The professional person in charge of an agency providing
6 comprehensive evaluation or a facility providing intensive treatment
7 may recommend an evaluation for an executorship to the officer
8 providing executorship investigations in the county of residence of
9 the person if the professional person in charge of the agency
10 providing comprehensive evaluation or the facility providing
11 intensive treatment determines that a person in the professional's
12 care is incapable of caring for the person's own health and well-
13 being due to a serious mental illness and substance use disorder, as
14 evidenced by frequent detention for evaluation and treatment.

15 (d) The director of a hospital that provides general acute care
16 services, including emergency services, may recommend an evaluation
17 for an executorship to the officer providing executorship
18 investigations in the county of residence of the person if the
19 director determines that a person who presents to the hospital is
20 incapable of caring for the person's own health and well-being due to
21 a serious mental illness and substance use disorder, as evidenced by
22 frequent detention for evaluation and treatment. The hospital
23 director may delegate this authority to make a determination and
24 recommendation to health care providers in the hospital.

25 (3) If the officer providing the executorship investigation, upon
26 conducting an evaluation for an executorship, finds that the person
27 meets the criteria for executorship and that executorship is the
28 least restrictive alternative, the officer shall petition the
29 superior court in the county of residence of the person to establish
30 an executorship.

31 NEW SECTION. **Sec. 6.** (1) The officer providing executorship
32 investigations shall investigate all available alternatives to an
33 executorship and shall recommend an executorship to the court only if
34 no less restrictive alternatives exist. This officer shall render to
35 the court a written report of investigation prior to the hearing. The
36 report to the court must be comprehensive and must contain all
37 relevant aspects of the person's medical, psychological, financial,
38 family, vocational, and social condition, and information obtained
39 from the person's family members, close friends, social worker, or

1 principal therapist. The report must also contain all available
2 information concerning the person's real and personal property. The
3 facilities providing medical treatment, or intensive treatment or
4 comprehensive evaluation, the sheriff, and the referring hospital
5 shall disclose any records or information that may facilitate the
6 investigation. If the officer providing the executorship
7 investigation recommends an executorship, the officer shall explain
8 why all less restrictive alternatives are not sufficient, and if the
9 officer recommends against an executorship, the officer shall set
10 forth all alternatives available. When confidentiality and client
11 privacy laws permit, a copy of the report shall be transmitted to the
12 individual who originally recommended the executorship, and the
13 information shared must be compliant with state and federal laws
14 governing protected health information. The court shall receive the
15 report in evidence and shall read and consider the contents of the
16 report in rendering its judgment.

17 (2) (a) The report from the CARE officer providing the
18 executorship investigation must contain the officer's recommendations
19 concerning the powers to be granted to and the duties to be imposed
20 upon the CARE officer, the legal disabilities to be imposed upon the
21 individual subject to the executorship, and the proper placement for
22 the individual subject to the executorship pursuant to subsection (5)
23 of this section, and must explain why each of these items is the
24 least restrictive alternative. The report to the court must also
25 contain an agreement signed by the person recommended to serve as the
26 CARE officer certifying that the person or agency is able and willing
27 to serve as the CARE officer. The CARE officer performing the
28 executorship investigation may be the person recommended to serve as
29 the CARE officer to supervise the person under investigation.

30 (b) The person appointed as the CARE officer under this chapter
31 may be an immediate family member or other close relative related by
32 blood or law.

33 (3) The person recommended to serve as the CARE officer shall
34 promptly notify the officer providing the executorship investigation
35 whether the person recommended to serve as the CARE officer will
36 accept the position, if appointed. If notified that the person
37 recommended will not accept the position, if appointed, the officer
38 providing the executorship investigation shall promptly recommend
39 another person to serve as the CARE officer.

1 (4) (a) A person must not be designated as a CARE officer whose
2 interests, activities, obligations, or responsibilities are such as
3 to compromise the person's or agency's ability to represent and
4 safeguard the interests of the individual subject to an executorship.
5 The CARE officer has a fiduciary duty to protect and care for the
6 individual subject to an executorship.

7 (b) A person serving as a CARE officer under the provisions of
8 this chapter shall, to the extent allowable under state and federal
9 law, have access to the medical records of the individual subject to
10 executorship.

11 (5) When ordered by the court, after the hearing required by this
12 chapter, a CARE officer appointed pursuant to this chapter shall
13 provide the least restrictive and most clinically appropriate
14 placement for the individual subject to the executorship, which shall
15 be the individual subject to the executorship's residence or a
16 community-based residential care setting in supportive community
17 housing that provides wraparound services, such as on-site physical
18 and behavioral health services, unless the court for good cause
19 orders otherwise.

20 (6) (a) At any time, an individual subject to an executorship or
21 any person on behalf of the individual subject to the executorship,
22 with the consent of the individual or the individual's counsel, may
23 petition the court for a hearing to contest the powers granted to the
24 CARE officer under subsection (5) of this section.

25 (b) A request for hearing pursuant to this section does not
26 affect the right of an individual subject to an executorship to
27 petition the court for a rehearing as to the individual's status as
28 an individual subject to an executorship pursuant to subsection (10)
29 of this section. A hearing pursuant to this section does not include
30 trial by jury.

31 (7) (a) Executorships initiated pursuant to this chapter
32 automatically terminate one year after the appointment of the CARE
33 officer by the superior court, or shorter if ordered by the court. If
34 upon the termination of an initial or a succeeding period of
35 executorship the CARE officer determines that the executorship is
36 still required, the CARE officer may petition the superior court for
37 the officer's reappointment as a CARE officer for a succeeding one-
38 year period, or any shorter period.

39 (b) Any program in which an individual subject to an executorship
40 is placed shall release the individual subject to an executorship at

1 the individual's request when the executorship terminates. A petition
2 for reappointment filed by the CARE officer must be transmitted to
3 the program at least thirty days before the automatic termination
4 date.

5 (8) (a) The clerk of the superior court shall notify each CARE
6 officer, the individual subject to executorship, the person in charge
7 of the program in which the individual subject to executorship
8 receives services, and the individual subject to executorship's
9 attorney, at least sixty days before the termination of the
10 executorship. Notification must be given in person or by first-class
11 mail.

12 (b) If the CARE officer does not petition to reestablish an
13 executorship at or before the termination of the executorship, the
14 court shall issue an order terminating the executorship. The order
15 must be provided to the CARE officer and the individual subject to
16 the executorship in person or by first-class mail.

17 (c) The courts administering this chapter may adopt rules, forms,
18 and standards necessary to implement this chapter.

19 (9) (a) At any time, the individual subject to an executorship may
20 petition the superior court for a rehearing as to the individual's
21 status as an individual subject to an executorship.

22 (b) If an individual subject to an executorship appeals a court's
23 decision to establish an executorship, the executorship continues
24 unless execution of judgment is stayed by the superior court or an
25 appellate court.

26 (10) A hearing must be held on all petitions under this chapter
27 within thirty days of the date of the petition. If the individual
28 subject to an executorship or proposed individual subject to an
29 executorship is not represented by counsel, the court shall appoint
30 the public defender for the individual within five days after the
31 date of the petition at the county's or city and county's expense. A
32 hearing or trial must not occur under this chapter unless the
33 individual subject to an executorship or proposed individual subject
34 to an executorship is represented by counsel.

35 NEW SECTION. **Sec. 7.** The state of Washington shall provide
36 sufficient funds to provide administrative service and care for up to
37 ten individuals in each participating county who qualify for the
38 pilot program created in section 2 of this act.

1 NEW SECTION. **Sec. 8.** This chapter takes effect January 1, 2021.

2 NEW SECTION. **Sec. 9.** This chapter expires December 31, 2025.

3 NEW SECTION. **Sec. 10.** Sections 2 through 9 of this act
4 constitute a new chapter in Title 11 RCW.

5 NEW SECTION. **Sec. 11.** This act may be known and cited as the
6 caring for those with behavioral health disorders act.

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