SENATE BILL REPORT
ESSB 6491

As Passed Senate, February 12, 2018

Title: An act relating to increasing the availability of assisted outpatient behavioral health treatment.

Brief Description: Increasing the availability of assisted outpatient behavioral health treatment.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban and Darneille).

Brief History:
Committee Activity: Human Services & Corrections: 1/29/18, 1/30/18 [DP-WM].
Ways & Means: 2/05/18, 2/06/18 [DPS, w/oRec].
Floor Activity:
Passed Senate: 2/12/18, 46-1.

Brief Summary of Engrossed First Substitute Bill

- Expands assisted outpatient mental health treatment (AOMHT) after April 1, 2018, to include substance use disorder treatment and renames it assisted outpatient behavioral health treatment (AOBHT).
- Reduces eligibility criteria for AOBHT and extends and simplifies AOBHT filing processes.
- Allows revocation to inpatient treatment for a person receiving less restrictive alternative treatment if the criteria for inpatient detention are met.
- Allows a family member, guardian, or conservator of a person who files a court petition for review of a decision to not detain the person for involuntary treatment and to request that the court require the filing of an AOBHT petition.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt and Miloscia.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6491 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Braun, Ranking Member; Bailey, Becker, Billig, Brown, Carlyle, Conway, Darneille, Fain, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa.

Staff: Travis Sugarman (786-7446)

Background: The Involuntary Treatment Act (ITA) allows for the detention of a person for involuntary mental health treatment when, as a result of a mental disorder, the person is found by a designated mental health professional (DMHP), court, or jury to present a likelihood of serious harm to themselves, others, or the property of others, or to be gravely disabled. Gravely disabled is a standard that recognizes a present or developing risk of harm based on a person's inability to care for their essential health or safety needs. Effective April 1, 2018, the ITA will be expanded to include consideration of risks of harm related to a substance use disorder, and DMHPs, the mental health professionals who serve as the gatekeepers of the ITA system, will be renamed designated crisis responders (DCRs) and required to have training in diagnosis and assessment of risk related to substance use disorders.

Less Restrictive Alternative (LRA) Treatment. State law, backstopped by various court decisions, requires involuntary civil treatment to be provided in the least restrictive environment that will meet the needs of the person and the community. An order for involuntary treatment in an outpatient setting is called an LRA order. A court or jury may impose an order for LRA treatment following a period of secure detention for either 90 or 180 days if it finds that the person continues to meet the criteria for involuntary treatment and that the person's needs can be met by an LRA. State law establishes required components for an LRA order both for the person subject to the order and for an outpatient treatment agency which agrees to provide LRA treatment, including the assignment of a care coordinator, scheduling an intake evaluation and psychiatric evaluation, establishing a schedule of regular contacts between the person and the provider of LRA treatment, and medication management. A DMHP may file a court petition to extend an LRA order for up to an additional 180 days per petition filed.

Enforcement of an LRA Order. If a person is suspected not to be adhering to the terms of an LRA order, or suspected to be experiencing substantial deterioration, substantial decompensation, or to pose a substantial likelihood of serious harm while subject to an LRA order, an agency or facility designated to provide LRA treatment or a DMHP may take a range of actions to enforce or modify the LRA. A DMHP or the secretary of DSHS may revoke the LRA by placing the person in secure detention for inpatient treatment and filing a

petition for revocation with the court. In this event, the court must schedule a hearing within five days of the filing of the petition for revocation. The court must determine whether:

- the person has adhered to the terms of the LRA;
- substantial deterioration in functioning has occurred;
- there is evidence of substantial decompensation with a reasonable probability that it can be reversed by inpatient treatment; or
- there is a likelihood of serious harm.

If the court makes one of the findings listed above, they must determine whether it should reinstate or modify the LRA, or order a further period of detention for inpatient treatment, up to the remaining time on the LRA order.

AOMHT. In 2015, the Legislature adopted E2SHB 1450 establishing AOMHT in Washington. AOMHT is based on Kendra's Law, an assisted outpatient treatment law adopted in the State of New York in 1999, and subsequently adapted for adoption by a number of other states. AOMHT is a process by which a DMHP may file a petition requesting LRA treatment for a person before the person meets criteria for detention under the ITA, and without placing the person in detention for inpatient treatment. To file a petition for AOMHT, a DMHP must first determine through an investigation that a person meets criteria for assisted outpatient treatment, during which the person may not be detained for longer than 6 or 12 hours. An AOMHT petition must subsequently be filed in court by two licensed professionals who have examined the person and consulted with an agency which agrees to provide LRA treatment to the person. At least one of these professionals must be a physician, psychiatric advanced registered nurse practitioner, or physician assistant. This petition must be reviewed in superior court within 72 hours following the conclusion of the DMHP investigation, excluding weekends and holidays. A person subject to a petition for AOMHT may not be detained for inpatient treatment. If such a person does not adhere to the conditions of the LRA order, or experiences substantial deterioration, substantial decompensation, or a likelihood of serious harm, a DMHP may not revoke the LRA by placing the person in secure detention for inpatient treatment.

To be eligible for AOHMT, a DMHP, court, or jury must find that a person, as the result of a mental disorder:

- has been placed in detention by a court for involuntary mental health treatment at least twice during the preceding 36 months;
- is unlikely to voluntarily participate in outpatient treatment without an LRA order, based on history or current behavior;
- is unlikely to survive safely in the community without supervision;
- is likely to benefit from LRA treatment; and
- requires LRA treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or becoming gravely disabled within a reasonably short period of time.

Summary of Engrossed First Substitute Bill: Starting no sooner than April 1, 2018, when the ITA is expanded to include consideration of substance use disorders, changes are made to AOMHT as detailed below.

AOMHT is expanded to include a need for treatment related to a substance use disorder, and renamed AOBHT.

Eligibility requirements for AOBHT are reduced by eliminating two criteria:
- that the person has been detained by a court for involuntary treatment at least twice during the preceding 36 months; and
- that the person is unlikely to survive safely in the community without supervision.

The initial petition process for AOBHT is extended and simplified as follows:
- the time for a DCR to complete an initial AOBHT investigation is extended to 48 hours, provided that the person may not be detained for investigation for any period longer than allowed by current law;
- the AOBHT petition may be filed by the DCR alone, without a declaration from a second licensed professional;
- the time for superior court review of the AOBHT petition is extended to within five judicial days of filing the petition; and
- the DCR must provide the person with a summons to the court hearing, along with designation of appointed counsel and proof of services as provided in current law.

Revocation of an LRA to inpatient detention by a DCR is permitted if the person meets the criteria for inpatient detention.

Effective April 1, 2018, the remedies available to an immediate family member, guardian, or conservator of a person based on a petition for court review of a DCR's failure to detain a person under the ITA are expanded to include a request to order the DCR to file a petition for AOBHT.

If a person subject to an AOBHT petition is in the custody of a jail or prison at the time of the DCR investigation, the superior court may schedule its review hearing within five judicial days following the person's anticipated release date from custody. The hearing may be held while the person is still in jail or prison custody, provided that the process does not extend the person's time in custody, the hearing must be held within three judicial days of the filing of the petition, the criminal charges must not be a pretext for the purposes of filing a petition under the ITA, and the person's release from custody must be expected to quickly follow the adjudication of the petition.

Medication management is eliminated as a mandatory service under an LRA, but is added as an optional LRA treatment service. A DCR must be appointed by the county, and entity appointed by the county, or the behavioral health organization.

Appropriation: None.

Fiscal Note: Requested on January 28, 2018.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections): PRO: This program has never been used because it is so restrictive and difficult to navigate for health professionals. It is a good idea that provides a valuable tool to help those suffering from mental disorders. I have talked to providers who are excited about using AOBHT if this bill passes. This program has not been accessible to people who need it. Families suffering from substance use disorders need the expansion of this law, which provides an additional suite of options for DCRs. These options could include medication assisted treatment for an opioid use disorder delivered in an outpatient setting. Families are told that their best hope is for their loved one to be arrested so that the criminal justice system can mandate treatment. This provides an opportunity to recognize substance use disorders as a chronic brain disease which requires medical care, not incarceration. It provides a nudge from the judge, which has been important in bringing so many individuals to recovery. Please amend the bill to include osteopathic psychiatrists certified by the American Osteopathic Board of Neurology and Psychiatry.

Persons Testifying (Human Services & Corrections): PRO: Senator Steve O'Ban, Prime Sponsor; Lauren Davis, citizen; David Knutson, Washington Osteopathic Medical Association.

Persons Signed In To Testify But Not Testifying (Human Services & Corrections): No one.

Staff Summary of Public Testimony on Original Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Adding in substance abuse and easing some of the restrictions will certainly help make this a tool we can use. We would like to get together with those who are doing the fiscal note. Our caseload shows the changes would show a $13 million increase for this biennium alone. An amendment to restore the criteria for previous hospitalization would help with the fiscal impact of the bill.

Persons Testifying (Ways & Means): PRO: David Foster, King County.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.