HOUSE BILL REPORT
HB 1773

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to assisted outpatient treatment for persons with behavioral health disorders.

Brief Description: Concerning assisted outpatient treatment for persons with behavioral health disorders.

Sponsors: Representatives Taylor, Davis, Leavitt, Callan, Cody, Macri, Ormsby and Harris-Talley.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/19/22, 1/28/22 [DP].

Brief Summary of Bill

- Revises the definition of "in need of assisted outpatient behavioral health treatment" under the Involuntary Treatment Act.
- Establishes a new procedure for designated persons to directly file a petition in superior court for up to 18 months of assisted outpatient treatment (AOT), and establishes requirements and procedures for the petition process.
- Requires the AOT petition to be served on the prosecutor, who must review the petition and, if the petition meets the requirements of law, schedule a court hearing and serve the respondent.
- Provides that less restrictive alternative (LRA) treatment may include a requirement to participate in partial hospitalization.
- Allows for revocation of an LRA order based on a person being in need of AOT on the same grounds as for other LRA orders.
- Amends the law governing behavioral health treatment for minors to

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allow commitments based on AOT for adolescents aged 13 to 17.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Hansen, Chair; Davis, Entenman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Without recommendation. Signed by 7 members: Representatives Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Goodman and Ybarra.

Staff: Edie Adams (786-7180).

Background:

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for involuntary behavioral health treatment of adults. A person may be committed by a court for involuntary behavioral health treatment if he or she, due to a mental health or substance use disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient behavioral health treatment (AOBHT).

A designated crisis responder (DCR) is a mental health professional responsible for investigating and determining whether a person may be in need of involuntary treatment. A person may be committed for involuntary inpatient treatment only on the basis of likelihood of serious harm or grave disability. Where the petition is based on the person being in need of AOBHT, the commitment may only be for treatment in an outpatient setting under a less restrictive alternative treatment (LRA) order. The provisions governing involuntary treatment of minors over the age of 13 are parallel with the adult ITA in many respects, but do not include provisions for involuntary commitment based on a minor being in need of AOBHT.

Assisted Outpatient Behavioral Health Treatment.
A person is in need of AOBHT if the person, as a result of a behavioral health disorder:

- has been committed by a court to detention for involuntary behavioral health treatment during the preceding 36 months;
- is unlikely to voluntarily participate in outpatient treatment without an LRA order, based on a history of nonadherence with treatment or in view of the person's current behavior;
- 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 the person

becoming gravely disabled within a reasonably short time.

In order to file a petition for AOBHT, the DCR must conduct an investigation and determine that the person meets criteria. The DCR may spend up to 48 hours to conduct the investigation. If the DCR finds that a person is in need of AOBHT, the DCR files a petition for up to 90 days of LRA treatment and must provide the person with a summons to the court hearing and serve the petition on the person and the person's attorney. The probable cause hearing must be held within five judicial days of the filing of the petition. If the court finds that the person meets criteria, the court may enter an order for 90 days of LRA treatment.

Less Restrictive Alternative Treatment.
When entering an order for involuntary treatment, if the court finds that treatment in a less restrictive alternative than detention is in the best interest of the person, the court must order an appropriate less restrictive course of treatment rather than inpatient treatment. Less restrictive alternative treatment must include specified components, including assignment of a care coordinator, an intake evaluation and psychiatric evaluation, a schedule of regular contacts with the treatment provider, a transition plan addressing access to continued services at the end of the order, and individual crisis plan. In addition, LRA treatment may include additional requirements, including a requirement to participate in medication management, psychotherapy, residential treatment, and periodic court review.

Enforcement of Less Restrictive Alternative Orders.
Either a DCR or the agency or facility providing services under an LRA order may take a number of actions if a person fails to adhere to the terms of the LRA order, if the person is suspected of experiencing substantial deterioration in functioning or substantial decompensation that can with reasonable probability be reversed, or if the person poses a likelihood of serious harm.

A DCR or the Secretary of the Department of Social and Health Services may revoke the LRA order by placing the person in detention and filing a petition for revocation. A hearing on the petition must be held within five days. Except for cases where the LRA order is based on AOBHT, the court must determine whether: the person has adhered to the terms of the LRA order; 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 these findings, the court may reinstate or modify the order, or it may order a further period of detention for inpatient treatment.

If the LRA order is based solely on the person being in need of AOBHT, the court must determine whether to continue the detention for inpatient treatment or reinstate or modify the person's LRA order. To continue the detention, the court must find that the person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled and no less restrictive alternatives to involuntary detention and treatment are in the

best interest of the person or others.

Summary of Bill:

Assisted outpatient behavioral health treatment is renamed assisted outpatient treatment (AOT). New standards and procedures are established for commitments for persons who are in need of AOT.

Definitions.
The definition of "in need of assisted outpatient treatment" is revised. A person is in need of AOT if:

- The person has a behavioral health disorder.
- Based on a clinical determination and in view of the person's treatment history and current behavior, at least one of the following is true:
    - The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.
    - The person is in need of AOT in order to prevent a relapse or deterioration that would be likely to result in grave disability or a likelihood of serious harm.
- The person has a history of lack of compliance with treatment, in that at least one of the following is true:
    - The person's behavioral health disorder has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
    - The person's behavioral health disorder has, at least twice within the last 36 months, been a substantial factor in: necessitating emergency medical care; necessitating hospitalization for behavioral health-related medical conditions including overdose, infected abscesses, sepsis, endocarditis, or other maladies; or behavior that resulted in the person's incarceration.
    - The person's behavioral health disorder has resulted in one or more violent acts, threats, or attempts to cause serious physical harm to themselves or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
- The person has been offered an opportunity to participate in a treatment plan, and the person continues to not engage in treatment.
- Participation in an AOT program would be the least restrictive alternative necessary to ensure the person's recovery and stability.
- The person will benefit from AOT.

Petition Process.
Assisted outpatient treatment is removed from the DCR investigation and petition process.

Instead, a petition for up to 18 months of LRA treatment on the basis that a person is in need of AOT may be filed by:

- the director of a hospital where the person is hospitalized;
- the director of a behavioral health service provider providing behavioral health care or residential services to the person;
- the person's treating mental health professional or substance use disorder professional or one who has evaluated the person;
- a DCR;
- a release planner from a corrections facility; or
- an emergency room physician.

The petitioner must personally interview the person, unless the person refuses an interview, to determine whether the person will voluntarily receive appropriate treatment. The petitioner must allege specific facts based on personal observation, evaluation, or investigation, and must consider the reliability or credibility of any person providing information material to the petition.

The petition must include the following:

- a statement of the circumstances under which the person's condition was made known and the basis for the opinion that the person is in need of AOT;
- a declaration from a physician, physician assistant, advanced registered nurse practitioner, or the person's treating mental health professional or substance use disorder professional, who has examined the person no more than 10 days prior to the filing of the petition and who is willing to testify in support of the petition, or who alternatively has attempted to examine the person within the same period but has not been able to obtain the person's cooperation, and who is willing to testify to the reasons they believe that the person meets AOT criteria;
- the declarations of any additional witnesses supporting the petition;
- the name of an agency, provider, or facility that agrees to provide LRA treatment; and
- if the person is detained at the time of the petition, the anticipated release date of the person and any other details needed to facilitate successful reentry and transition into the community.

The petition must be served on the county prosecuting attorney. The prosecutor must review the petition, and if appropriate, consult with the petitioner to conform the petition with the requirements of law. The prosecutor may decline to proceed with a petition that does not meet legal requirements.

When appropriate, the prosecutor must schedule the petition for a hearing and cause the petition, summons, and additional information to be served upon the person and the person's guardian, if any.

If the petition involves a person whom the prosecutor knows, or has reason to know, is an American Indian or Alaska Native who receives medical or behavioral health services from

a tribe within Washington, the prosecutor must notify the tribe and Indian health care provider.

Less restrictive alternative treatment, including for conditional release to LRA treatment for persons who have been civilly committed under criminal insanity laws, may include a requirement to participate in partial hospitalization.

Less restrictive alternative treatment orders based on a person being in need of AOT are subject to the same standards for modification or revocation as for other LRA orders. This includes allowing the court to order the respondent to be detained for inpatient treatment if: the person has failed to adhere to the court order; experienced substantial deterioration in functioning; experienced substantial decompensation which can be reversed by inpatient treatment; or presents a likelihood of serious harm and detention for inpatient treatment is appropriate.

The law governing involuntary behavioral health treatment for minors is amended to allow a petition for LRA treatment for adolescents who are 13 to 17 years old on the basis that the adolescent is in need of AOT, under the same standards that apply for adults in need of AOT.

Behavioral health administrative services organizations must employ an AOT program coordinator to oversee system coordination and legal compliance for AOT.

The development of an individualized discharge plan for a person committed to a state hospital for 90 or 180 days must include consideration of whether a petition should be filed for LRA treatment on the basis the person is in need of AOT.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 3 and 4, relating to definitions, and section 27, relating to effective dates of prior legislation, which take effect July 1, 2022; section 6, relating to designated crisis responder petitions for initial detention, section 13 relating to probable cause hearings for petitions for 14 days of involuntary treatment, section 17, relating to court orders for involuntary treatment for long-term commitment, and section 33, relating to modification or revocation of less restrictive alternative treatment orders, which because of prior delayed effective dates take effect July 1, 2026; and section 25, relating to the requirements of behavioral health services organizations contracted with the Health Care Authority, which takes effect October 1, 2022.

Staff Summary of Public Testimony:

(In support) The bill is modeled after national best practices and laws in other states where AOT is being used successfully. It allows individuals to receive court-ordered services and treatment in the community with the support of family and support networks, rather than in an inpatient setting. Assisted outpatient treatment has been on the books for five years but has never been operationalized in most of the state. The current AOT process is unduly burdensome and there is insufficient funding to provide enhanced treatment and court oversight, which are the hallmarks of a successful AOT program.

There is no support or accountability in the current behavioral health system. The system should not wait to respond until people hit rock bottom and need to be hospitalized or end up in jail. Anosognosia is a condition that impairs a person's ability to understand and be aware of their illness and make reality-based decisions. It can make honest people become criminals when they do things they would never do if their brains were working correctly. Laws that ignore this condition fail to serve the most vulnerable.

The bill streamlines the AOT process and addresses several major problems with the current system. It clarifies and expands eligibility criteria and expands who is able to seek AOT care. It extends time of supervision because the current 90-day period does not work, and it allows for revocation and rehospitalization when clinically necessary. The bill establishes AOT as an option before a person has been involuntarily committed for treatment.

Assisted outpatient treatment is a model that works for serving the most vulnerable, because it puts a judge and a full care team in charge of ensuring that the patient gets needed care. To make it work well, there must be funding for wraparound care, a program coordinator to make sure that there is accountability for both patients and providers, and for court services to allow for the black robe effect, which works and is needed to engage patients on their road to recovery.

There are some improvements that should be made to the standards for AOT. It should be clarified that the look-back period excludes time spent in the most recent hospitalization or incarceration, but not the fact of the hospitalization or incarceration. Clarification is also needed regarding what it means to be an involuntary patient. The provision that says a person may not receive AOT unless they have been offered an opportunity to participate in treatment and continue to not engage should be removed.

(Opposed) Persons suffering from behavioral health issues endure agonizing emotional and physical pain and can be traumatized by forced treatment. The system is fundamentally broken but this bill does not solve the problems. The better approach is to invest valuable time and limited resources in fixing the system before passing a law that will mandate that people endure it. This bill may save some lives but it will surely harm many others.

The bill expands eligibility criteria and removes necessary safeguards in current AOT law that protect the liberty of mental health patients. It changes the standard to no longer require that the person will present a likelihood of serious harm or become gravely disabled

within a reasonably short period of time, and it allows a broad range of people to petition. Some language in the AOT standard is incredibly vague which is unacceptable when liberty interests are at stake. Recovery and stability should be defined with specificity and there should be hard evidence that proposed treatment will lead to recovery and stability.

The bill strips away civil rights of the most vulnerable in the community. Currently, individuals who have an AOT order revoked may face 14 days of involuntary hospitalization. The bill would allow hospitalization for up to 18 months under a lower burden of proof than currently required. This is an arbitrary timeline that is not patient-centered, and there is no criteria for ending commitment. Lengthy hospitalizations fail to address long-term needs of those impacted by mental illness, and can put people at risk of losing their housing, breaking family ties, and facing financial collapse.

The intent of the bill is to expand access to behavioral health treatment, but it will actually result in the opposite. The behavioral health system is in crisis and cannot meet the needs of residents for even basic care, but AOT as implemented in this bill will not address the problems. It adds another complex and expensive layer of forced treatment and court process that will pull resources from already strained systems. It is expensive and unnecessary, and may have a discriminatory impact.

(Other) This is an important topic, but there are concerns that the bill may actually increase the length of time that it takes some individuals to receive services. The bill requires the prosecutor to file these petitions. Many prosecutor offices are currently short-staffed and this would add to that problem, especially in smaller counties. Prosecutors currently do not file these petitions; they represent a facility or DCR in the petition. Prosecutors are attorneys, not clinicians, but they are being asked to make quasi-clinical assessments.

Persons Testifying: (In support) Representative Jamila Taylor, prime sponsor; Johanna Bender, Superior Court Judges' Association; Melanie Smith, National Alliance on Mental Illness Washington; Jerri Clark, Mothers of the Mentally Ill; Linda Wiley; Brian Stettin, Treatment Advocacy Center; and Patty Horne-Brine.

(Opposed) Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Kimberly Mosolf, Disability Rights Washington; Laura Van Tosh; Joshua Wallace, Peer Washington; Deepa Sivarajan, No New Washington Prisons; Rebecca Faust; and Richard Warner, Citizens Commission on Human Rights.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.