FINAL BILL REPORT
2SHB 1877

C 209 L 24
Synopsis as Enacted

Brief Description: Improving the Washington state behavioral health system for better coordination and recognition with the Indian behavioral health system.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Lekanoff, Stearns, Ortiz-Self, Ramel, Ramos, Cortes, Reed, Ormsby, Macri, Street, Paul, Gregerson, Doglio, Callan, Orwall, Mena, Wylie, Reeves, Pollet, Davis and Shavers).

House Committee on Civil Rights & Judiciary
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

Background:

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for involuntary behavioral health treatment for adults. Under the ITA, a person may be committed by a court for involuntary behavioral health treatment if the person, 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 treatment. The provisions governing involuntary treatment of minors over the age of 13 are parallel with the adult ITA in many respects. In 2020 legislation was enacted that incorporated tribes, tribal entities, and Indian health care providers within the processes and requirements of the ITA.

Designated crisis responders (DCRs) are responsible for investigating and determining whether a person may be in need of involuntary treatment. A DCR may be a mental health professional appointed by the Health Care Authority (HCA) in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider.

If the DCR finds a basis for commitment, the DCR may detain or petition a court to order detention for the person for up to 120 hours, excluding weekends and holidays. After the initial 120-hour detention, the facility providing treatment may petition the court to have the

---

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

person committed for further behavioral health treatment for 14 days. Upon subsequent petitions and hearings, a court may order up to an additional 90 days of commitment at a state hospital, followed by successive terms of up to 180 days of commitment. When entering an order for involuntary treatment at any stage, the court must order an appropriate less restrictive alternative (LRA) course of treatment rather than inpatient treatment if the court finds that LRA treatment is in the best interest of the person.

When a DCR conducts an initial investigation or evaluation of a person and the DCR knows the person is an American Indian or Alaska Native from a tribe in Washington, the DCR must notify the tribe or Indian health care provider as to whether or not a petition will be filed. The notification must occur within three hours and be made to the tribal contact identified in the HCA's tribal crisis coordination plan. A facility discharging a person who is an American Indian or Alaska Native from a tribe in Washington and who has been subject to an involuntary commitment order must provide notice of the discharge to the federally recognized tribe or Indian health care provider if the DCR has been appointed by the HCA.

If a DCR decides not to detain a person for evaluation and treatment or if 48 hours have passed since a DCR received a request for investigation and the DCR has not taken action to have the person detained, an immediate family member or guardian or conservator of the person, or a federally recognized Indian tribe if the person is a member of the tribe, may petition the superior court for initial detention.

Tribal court orders for involuntary commitment are to be recognized and enforced according to superior court rules governing tribal court jurisdiction.

Designated Crisis Responder Protocols.
The HCA is responsible for developing and updating statewide protocols to be used by DCRs and professional persons in administration of the involuntary treatment laws for adults and minors. The protocols must be developed and updated in consultation with a variety of stakeholders and must provide for uniform development and application criteria in evaluation and commitment recommendations relating to persons who may have behavioral health disorders.

Confidentiality of Health Care Information.
The state Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or a written authorization by the patient. With respect to records relating to mental health services, 2020 legislation explicitly included Indian health care providers among qualified professional persons who may share information and records related to mental health and civil commitment services and included tribal courts among courts who may interact with information and records related to mental health services.

Reimbursement of Judicial Costs.
A county may apply to its behavioral health administrative services organization (BHASO) on a quarterly basis for reimbursement of its costs in providing judicial services for civil commitment cases based on an independent assessment of the county's actual direct costs. In counties where there is no significant history of similar cases, the reimbursement rate is 80 percent of the median reimbursement rate of counties included in the independent assessment. The BHASO may in turn seek reimbursement from the BHASO that serves the county of residence of the individual who is the subject of the commitment case.

Tribal-State Crisis Coordination Plans.
The HCA and Indian tribes develop and agree on protocols for coordinating behavioral health crisis services, care coordination, and discharge and transition planning for tribal members. The plans address access to tribal lands by DCRs and mobile crisis teams, notice and coordination with Indian health care providers during and after crisis services, and transportation of tribal members for evaluation and treatment services. Behavioral health administrative services organizations, under their contract with the HCA, are required to comply with tribal-state crisis coordination plans.

Summary:

Involuntary Treatment Act provisions governing adults and minors are revised to further incorporate tribes, Indian health care providers, and tribal entities in ITA processes and requirements.

"Behavioral health service provider" includes entities with a tribal attestation that they meet minimum standards or licensed or certified behavioral health agencies, and correctional facilities operated by tribal governments. The definition of "medical clearance" is revised to specifically include determinations by Indian health care providers and to state that, for a person presenting in the community, medical clearance is not required prior to investigation by a DCR. "Tribe" means a federally recognized Indian tribe.

An attorney representing a tribe has the right to intervene in civil commitment court proceedings. The "right to intervene" means the right of a tribal attorney to:
- attend court proceedings and speak in court;
- request copies of petitions filed and orders issued by the court;
- submit information to the court, including information about available tribal resources to coordinate services; and
- petition for initial detention of a person when a DCR has, after investigation, determined not to detain the person.

An agency, facility, or DCR must notify the tribe and Indian health care provider regarding any action that will be taken to enforce, modify, or revoke an LRA order or conditional release order for a person who is an American Indian or Alaska Native who receives

medical or behavioral health services from a tribe in Washington. The notice must be provided as soon as possible, but no later than three hours from the time the decision to take action is made. If proceedings for initial detention, involuntary outpatient treatment, or enforcement action for an LRA order are taken, the agency, facility, or DCR must provide the tribe and Indian health care provider with a copy of the petition, together with any orders issued by the court and a notice of the tribe's right to intervene before any hearing and no later than 24 hours after the petition is served upon the person.

When a facility providing involuntary treatment services discharges a person who is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe in Washington, the facility must provide notice of the person's discharge to the tribal contact listed in the HCA's crisis coordination plan. A facility providing substance use disorder services must attempt to obtain a release of information before discharge to meet the notice requirement.

Behavioral health service providers must accept tribal court orders from tribes located within the state on the same basis as state court orders issued under the ITA. Nothing in the involuntary treatment laws governing adults and minors may be read as an assertion of state jurisdiction or regulatory authority over a tribe.

Designated crisis responders must respond to referrals from tribal law enforcement officers and agencies and must collaborate and coordinate with tribal law enforcement when a court enters an initial detention order in a proceeding brought by a tribe if the person is a member of the tribe. Each person detained or committed for evaluation or treatment under the ITA has the right to treatment by cultural or spiritual means through practices that are in accordance with a tribal or cultural tradition.

The HCA, in consultation with tribes and in coordination with the Indian health care providers and the American Indian Health Commission for Washington State, must establish written guidelines for conducting culturally appropriate evaluations of American Indians or Alaska Natives by December 31, 2024. The HCA must consult with tribal governments when developing and updating statewide protocols for use by DCRs and professional persons.

Files and records of ITA court proceedings are accessible to a tribal prosecuting attorney, and to a tribe or Indian health care provider who has the right to intervene in civil commitment proceedings. State health information privacy laws are amended to explicitly include Indian health care providers, tribal courts, tribal prosecutors, tribal law enforcement, and tribal public health officers in exemptions allowing disclosure of mental health information for specified purposes.

A tribe may apply to the HCA on a quarterly basis for reimbursement of its direct costs in providing judicial services for civil commitment cases. The Director of the HCA may make grants and/or purchase services from tribes to establish and operate community behavioral

health programs.

Behavioral health administrative services organizations must comply with, and ensure their contractors comply with, tribal crisis coordination plans agreed upon by the HCA and tribes for coordination of crisis services, care coordination, and discharge and transition planning with tribes and Indian health care providers applicable to their regional service areas.

The Administrative Office of the Courts (AOC), in consultation with the HCA, must develop and update court forms for use by DCRs by December 1, 2024, and superior courts must allow tribal DCRs to use court forms developed by AOC by January 1, 2025.

Votes on Final Passage:

House	97	0	
Senate	49	0	(Senate amended)
House	96	0	(House concurred)

Effective: June 6, 2024
Contingent (Sections 6 and 8)
July 1, 2026 (Sections 12 and 14)
Contingent (Section 18)
July 1, 2026 (Sections 24 and 27)