HOUSE BILL REPORT
ESB 5130

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to assisted outpatient treatment.

Brief Description: Concerning assisted outpatient treatment.

Sponsors: Senators Frame, Dhingra, Nobles, Pedersen, Randall and Wilson, C..

Brief History:
Committee Activity:
Civil Rights & Judiciary: 3/14/23, 3/28/23 [DPA].

Brief Summary of Engrossed Bill
(As Amended By Committee)

- Revises procedures and requirements for finding a person in need of assisted outpatient treatment (AOT), including changing requirements relating to declarations in support of a petition.
- Addresses the term of any less restrictive alternative (LRA) treatment order under an AOT petition for a person who is currently detained for involuntary treatment for 14 days or longer.
- Provides that when an LRA order is revoked and the person is detained for 14 days of inpatient treatment, the person must return to LRA treatment at the end of the 14-day period unless a petition for further inpatient treatment is filed or the person accepts voluntary treatment.
- Revises laws governing involuntary treatment of minors to clarify procedures for finding a minor in need of AOT, and establishes standards for enforcement of an LRA order or conditional release similar to enforcement provisions for adults under the Involuntary Treatment Act.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: Do pass as amended. Signed by 10 members: Representatives Hansen, Chair; Farivar, Vice Chair; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 1 member: Representative Walsh, Ranking Minority Member.

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 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 (AOT). The provisions governing involuntary treatment of minors over the age of 13 are parallel with the adult ITA in many respects.

Assisted Outpatient Treatment.
Involuntary commitment based on a person being in need of AOT was established in 2015 to create a process for a court order requiring that a person receive treatment in an outpatient setting under a less restrictive alternative (LRA) treatment order, before the person meets criteria for inpatient detention under the ITA. In 2022 legislation was enacted that revised the procedures and criteria for committing a person to AOT. In addition, the legislation authorized petitions for AOT under the law governing involuntary treatment for minors, under the same criteria and standards that apply for adults in need of AOT.

A petition for an AOT order may be filed by:

- the director of a hospital where the person is hospitalized or the director's designee;
- the director of a behavioral health service provider that is providing behavioral health care or residential services to the person, or the director's designee;
- the person's treating mental health professional or substance use disorder professional, or one who has evaluated the person;
- a designated crisis responder (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 certain information, including 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 filing of the petition and who is willing to testify in support of the petition. If the declaration is provided by the person's treating mental health professional or substance use disorder professional, the declaration must be cosigned by a supervising physician, physician assistant, or advanced registered nurse practitioner who certifies that they have reviewed the declaration.

The court may grant the AOT petition and order up to 18 months of LRA treatment if the court finds by clear, cogent, and convincing evidence that the person has a behavioral health disorder and will benefit from AOT, and the following additional criteria are met:

- 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 that has:
    - at least twice within the 36 months prior to the filing of the petition, been a significant factor in necessitating the person's hospitalization or receipt of services in a forensic or other mental health unit of a state or local correctional facility, provided that the 36-month period must be extended by the length of any hospitalization or incarceration that occurred within the 36-month period;
    - at least twice within the 36 months prior to the filing of the petition been a significant 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; or
    - resulted in one or more violent acts, threats, or attempts to cause serious physical harm to the person or another within the 48-months prior to filing of the petition, provided that the 48-month period must be extended by the length of a hospitalization or incarceration that occurred within the 48-month period.
- Participation in an AOT program would be the least restrictive alternative necessary to ensure the person's recovery and stability.

<u>Enforcement of Less Restrictive Alternative Orders</u>.
Less restrictive alternative treatment must include specified components, including assignment of a care coordinator, a schedule of regular contacts with the treatment provider, a transition plan addressing access to continued services at the end of the order, and an individual crisis plan. In addition, LRA treatment may include additional requirements, including to participate in medication management, psychotherapy, residential treatment, partial hospitalization, intensive outpatient treatment, and periodic court review.

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 order, is suspected of experiencing substantial deterioration in functioning or substantial decompensation that can with reasonable probability be reversed, or poses a likelihood of serious harm. These actions include counseling, increasing the intensity of services, petitioning for court review or modification of the order, or initiating revocation proceedings.

A DCR or 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 petition for revocation may be filed without detaining the person. A hearing on the petition must be held within five days of the detention or service of the petition. If the court upholds the petition, the court may reinstate or modify the order, or it may order a further period of detention for inpatient treatment. If the court orders detention for inpatient treatment, the treatment period must be for:

- 14 days from the revocation hearing if the LRA or conditional release order was based on a petition for AOT, initial detention, or a 14-day commitment; or
- the number of days left on the order if the LRA or conditional release order was based on a petition for 90 or 180 days of treatment.

Summary of Amended Bill:

Provisions of the ITA statutes governing adults and juveniles relating to petitions for AOT are amended. The required declaration in support of a petition for AOT for a person who is enrolled in treatment in a behavioral health agency may be provided by the person's behavioral health case manager. Where a declaration is provided by the person's treating mental health professional or substance use disorder professional, the requirement is removed that the declaration be cosigned by a supervising physician, physician assistant, or advanced registered nurse practitioner.

When a person is currently detained under the ITA for inpatient treatment for 14 days or longer, a court order for LRA treatment on the basis that the person is in need of AOT may be effective for 90 days for an adult who is currently detained for 14 days of treatment, or 180 days for an adult or minor who is currently detained for 90 or 180 days of treatment.

If a court revokes an LRA order that is based on a petition for AOT, initial detention, or a 14-day commitment, and orders inpatient treatment for up to 14 days, the person must return to LRA treatment under the order at the end of the 14-day period unless a petition for further treatment is filed or the person accepts voluntary treatment.

A number of changes are made to the minor involuntary treatment statutes to clarify procedures and requirements for finding a minor in need of AOT. The definition of "less restrictive alternative" is revised to include treatment pursuant to an AOT order, and "in need of assisted outpatient treatment" is defined as a minor who meets the criteria for AOT.

Standards are established for enforcement of the terms of an LRA order or conditional release, similar to enforcement provisions under the adult ITA. An agency or facility monitoring or providing LRA treatment services to a minor under a court order or conditional release may take a number of actions if the minor fails to adhere to the terms of the order or conditional release, or if the minor is experiencing substantial deterioration, decompensation, or a likelihood of serious harm. Available actions include: counseling and offering incentives for compliance; increasing the intensity of services; petitioning for court review or modification of the order or conditional release; temporary detention of the minor for up to 12 hours for evaluation; or initiating revocation procedures.

If a court in a revocation hearing determines that the minor should be detained for inpatient treatment, the treatment period must be for 14 days from the revocation hearing if the LRA order was based on a petition for AOT or for a 14-day commitment, and the minor must return to LRA treatment under the order at the end of the 14-day period unless a petition for further treatment is filed or the minor accepts voluntary treatment. If the LRA order or conditional release was based on a petition for a 180-day commitment, the inpatient treatment period must be for the number of days remaining on the order.

References to "conditional release order" are changed to "conditional release." The requirement is removed that an individualized discharge plan for a person committed to a state hospital must include consideration of whether a petition for LRA treatment should be filed on the basis the person is in need of AOT.

Amended Bill Compared to Engrossed Bill:

The amended bill changes the standard of proof for finding a person in need of AOT back to the current law standard of clear, cogent, and convincing evidence.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) There is a behavioral health crisis in our communities and more treatment options are needed. Assisted outpatient treatment is an effective option that fills the missing link between voluntary outpatient treatment and involuntary inpatient treatment. The bill allows AOT petitions to be filed for people who are currently hospitalized, which is important because some people are hospitalized on an emergent basis and temporarily stabilized, but they are unable to manage their care going forward, and will be quickly

rehospitalized without a support plan in place.

Assisted outpatient treatment is an ethical alternative to hospitalization for people with untreated, severe mental illness who are unable to stay safe or care for themselves. Family members are at a loss on how to help someone suffering with a severe illness. They need support when the person is in crisis but help is not available. The lives of persons with severe mental illness have been saved by AOT, and expanding access could help save other lives. Evidence is clear that most people with previously untreated psychosis who get AOT regain the capacity to connect with families and have stability in their work and housing. Assisted outpatient treatment allows individuals to receive treatment in their communities close to family and support networks. Successful AOT programs help keep people out of the criminal system and free up needed hospital beds.

(Opposed) The bill erodes individual rights by lowering the standard of proof and allowing case managers to petition for AOT, while removing the check and balance of supporting declarations filed by behavioral health professionals. Lowering the burden of proof to a mere preponderance is a significant loss of fundamental rights and would make Washington the only state with this low standard. This will lead to costly litigation because the same rights are not being provided to those who do not have as high of treatment needs as those who require hospitalization. The standard of proof has nothing to do with why AOT is not being utilized. The reason is that these programs are not currently in place and lowering the standard of proof will not have any effect on the status quo. Studies showing benefits of AOT are based on programs that have the higher standard proof, which this bill seeks to undo.

Many people with complex conditions will fail in AOT by being seen as noncompliant, and then the inpatient system kicks in. There is no requirement that AOT be person-centered or that patients direct their care. These protections should be added because informed consent and self-determination are essential to stabilization and recovery. Last year AOT was greatly expanded and those changes have barely begun to be implemented. It is premature to rush ahead with new changes without understanding whether they would be effective, lawful, or even justified. Making it even easier to force someone into treatment is not the answer. What is needed is expanded availability and quality of treatment services.

Persons Testifying: (In support) Senator Noel Frame, prime sponsor; Jerri Clark, Mothers of the Mentally Ill; Anna Nepomuceno, National Alliance on Mental Illness Washington; Barbara Courtney; and Johanna Bender, Superior Court Judges Association.

(Opposed) Kimberly Mosolf, Disability Rights Washington; Kari Reardon, Washington Defender Association; Ramona Hattendorf, The Arc of King County; Nathan Bays, King County Department of Public Defense; and Kathleen Wedemeyer, Citizens Commission on Human Rights.

Persons Signed In To Testify But Not Testifying: None.