SENATE BILL REPORT
SB 5130

As of January 16, 2023

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: Law & Justice: 1/16/23.

Brief Summary of Bill

- Reduces the burden of proof for an assisted outpatient treatment (AOT) petition from clear, cogent, and convincing evidence to a preponderance of the evidence.
- Allows a behavioral health case manager to file the supporting declaration for an AOT petition, and reduces requirements for supporting declarations filed by mental health professionals and substance use disorder professionals.
- Updates the process for revocation of a less restrictive alternative treatment order for children to match the process for adults.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kevin Black (786-7747)

Background: Assisted Outpatient Treatment. Assisted outpatient treatment (AOT) refers to procedures available within the Involuntary Treatment Act to obtain a court order for involuntary outpatient behavioral health treatment for a minor or adult. Involuntary outpatient treatment is also referred to as less restrictive alternative (LRA) treatment. Under AOT, a petition for an AOT order may be filed in superior court by one of the following:

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- the director of a hospital where the person is hospitalized, or the director's designee;
- the director of a behavioral health service provider 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;
- a release planner from a corrections facility; or
- an emergency room physician.

The AOT petition must be accompanied by a declaration from a physician, physician assistant, advanced registered nurse practitioner (ARNP), mental health professional (MHP), or substance use disorder professional (SUDP) who has examined the person or made an attempt to examine the person. If the declaration is submitted by an MHP or SUDP, it must be cosigned by a physician, physician assistant, or ARNP. The court may grant the petition if it finds:

- 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:
    1. the person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating; or
    2. the person is in need of AOT to prevent a relapse or deterioration that would be likely to result in grave disability or a likelihood of serious harm to the person or to others;
- the person has a history of lack of compliance with treatment for their behavioral health disorder that has:
    1. at least twice within the past 36 months been a significant factor necessitating hospitalization of the person, or the person's receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility;
    2. at least twice within the past 36 months been a significant factor necessitating emergency medical care or hospitalization for behavioral health-related medical conditions, or a significant factor in behavior which resulted in the person's incarceration in a state or local correctional facility; or
    3. resulted in one or more violent acts, threats, or attempts to cause serious physical harm to the person or another within the past 48 months;
- participation in an AOT program would be the least restrictive alternative necessary to ensure the person's recovery and stability; and
- the person will benefit from AOT.

If the court grants the AOT petition, it may be effective for up to 18 months.

<u>Enforcement of Less Restrictive Alternative Treatment Orders.</u> An LRA order may be enforced by a designated crisis responder (DCR) or an agency or facility providing services under the LRA order. These entities may take a range of actions if a person fails to follow

the LRA order, experiences substantial deterioration in functioning or decompensation that can with reasonable probability be reversed, or poses a likelihood of serious harm.

One method to enforce an LRA is for a DCR to seek revocation of the LRA order by placing the person in detention and filing a petition for revocation. A hearing on a revocation petition must be held within five days. If the court upholds the petition, the court may reinstate or modify the LRA order, or may order the person to undergo a further period of detention for inpatient treatment.

History of Assisted Outpatient Treatment Laws. AOT was established in Washington in 2015. In 2022, the Legislature extended AOT, which had previously applied to persons aged 18 and older, to apply to minors. The Legislature made a number of other changes at that time to facilitate participation in the AOT process.

Summary of Bill: The burden of proof for a petition for AOT is changed from clear, cogent, and convincing evidence to a preponderance of the evidence.

The behavioral health case manager of a person who is enrolled in behavioral health treatment may provide the supporting declaration for an AOT petition. A requirement for the declaration provided by a person's treating MHP or SUPD to be cosigned by a supervising physician, physician assistant, or ARNP who has reviewed the declaration is removed.

A person detained for 14 days of inpatient treatment based on a petition revoking an order for LRA treatment must return to LRA treatment at the end of the 14-day period, unless a petition for further involuntary inpatient treatment is filed or the person accepts voluntary treatment.

The process for revocation of an LRA order for a juvenile is amended to match the law for revocation of an LRA order for an adult. Changes include:

- allowing an agency or facility monitoring an LRA order to take and range of actions to enforce the LRA order, including counseling, increasing the intensity of services, petitioning for court review, and temporarily detaining the minor for up to 12 hours for evaluation; and
- defining the effect of revocation in the early stages of commitment as 14 days of detention for inpatient treatment or in the later stages as comprising the remainder of the time left on the LRA order.

The AOT process may not be used for a person who is currently court-detained for inpatient involuntary treatment.

Technical updates are made to juvenile involuntary treatment statutes to conform with the juvenile AOT law enacted in 2022. Instances where the state law refers to conditional release orders are changed to conditional release.

Appropriation: None.

Fiscal Note: Requested on January 9, 2023.

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: PRO: This helps us use an important tool in the toolbox to address the behavioral health crisis. We should stop waiting for people who are decompensating to harm others before bringing them help. AOT is less restrictive than involuntary commitment and gets people the help they need. Thanks for incorporating concerns from rural and frontier areas. There are challenges getting AOT up and running. We have concerns around language for adolescents because treating kids is different from treating adults. AOT fills the missing link between voluntary outpatient treatment and involuntary inpatient treatment. It allows people to stay in their own communities close to their families and supports. AOT helps keep people out of the criminal justice system and frees up hospital beds. AOT helps break a cycle that harms people. States which have adopted AOT show health improvements and cost savings. This bill will ease implementation challenges. The treatment path too often relies on emergency rooms and jails; AOT is a person-centered alternative that protects people from homelessness and suffering. Please strengthen funding for AOT services. Funding is key to realizing the vision of AOT. I had AOT in Ohio and it gave me the longest period of physical and financial stability in my life. AOT gave me the tools to live better and reconcile with friends and family members.

CON: This bill further loosens important protections and raises serious constitutional concerns. The clear and convincing evidence standard is the national standard and is an important check on intrusion into fundamental rights. No other state uses a preponderance of the evidence standard for AOT. It has not been established after just one year that measures adopted last year are unworkable. AOT is not trivial; it involves up to 18 months of involuntary court supervision, medical appointments, and state funding. This is not the answer. Children are different from adults, we should not hold them to the same burden of proof. 18 months is an excessive length of supervision. Imposition of AOT causes loss of firearm rights under federal law. AOT will create trauma in youth and make them dependent on government and the psychiatric treatment system. AOT reflects a failure to address the real issues of children. There is no convincing evidence that depression is caused by serotonin abnormalities. We should look at noncoercive, nonforced, and nondrug alternatives.

Persons Testifying: PRO: Senator Noel Frame, Prime Sponsor; Brad Banks, Behavioral Health Administrative Services Organizations; Bradley Tarr; Anna Nepomuceno, NAMI Washington; Michael White, King County.

CON: Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense Lawyers; Nathan Bays, King County Department of Public Defense; Kimberly Mosolf, Disability Rights Washington; Steven Pearce, Citizens Commission on Human Rights.

Persons Signed In To Testify But Not Testifying: No one.