

# SENATE BILL REPORT

## E3SHB 1713

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As Passed Senate, March 29, 2016

**Title:** An act relating to integrating the treatment systems for mental health and chemical dependency.

**Brief Description:** Integrating the treatment systems for mental health and chemical dependency.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Cody, Harris, Jinkins, Moeller, Tharinger, Appleton, Ortiz-Self and Pollet).

**Brief History:** Passed House: 2/15/16, 82-15; 3/29/16, 82-13; 3/29/16, 89-5.

**Committee Activity:** Human Services, Mental Health & Housing: 2/22/16, 2/25/16 [DPA-WM].

Ways & Means: 2/29/16, 3/03/16 [DPA].

**First Special Session:** Passed Senate: 3/29/16, 40-2.

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### SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

**Staff:** Kevin Black (786-7747)

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Travis Sugarman (786-7446)

**Background:** A chemical dependency involuntary commitment system (CD ITA) exists for persons who are incapacitated, present a likelihood of serious harm, or are gravely disabled by a substance use disorder. This system is superficially similar to the mental health involuntary commitment system (MH ITA); however, access to this system is limited, and may be entirely unavailable in some regions of the state. The state purchases 144 involuntary treatment beds for persons with substance use disorders from a single vendor operating involuntary commitment facilities located in Skagit and Spokane counties. The scarcity of chemical dependency involuntary treatment beds cause this service to be generally unavailable to patients who do not stipulate that they meet legal criteria for involuntary commitment and spend weeks on a waiting list, waiting to receive this service.

Under the CD ITA, a peace officer or other person designated by the county may take a person into protective custody who appears to be incapacitated or gravely disabled by alcohol

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or other drugs if the person is in a public place, or has threatened, attempted, or inflicted physical harm on themselves or another. The person must be brought to a treatment program certified by the Department of Social and Health Services (DSHS) within eight hours, or taken to an emergency medical service customarily used for incapacitated persons. Upon arrival the person must be examined by a qualified person, and may be admitted for treatment or referred to another health program. The person may be detained for up to 72 hours, after which the person must be released unless the facility or a designated chemical dependency specialist (DCDS) files a court petition for involuntary treatment.

A DCDS or facility may file this petition in superior court, district court, or another court permitted by court rule. The county prosecuting attorney may, at the discretion of the prosecuting attorney, choose to represent the petitioner. The petition must allege that:

1. as a result of chemical dependency the person presents a likelihood of serious harm or is gravely disabled;
2. the person has been admitted for detoxification sobering services, or chemical dependency treatment twice within the preceding 12 months and is in need of a more sustained treatment program; or
3. the person is chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed.

The petition must be accompanied by a certificate from a licensed physician who has examined the person within five days before submission of the petition, unless the person has refused to submit to a medical examination. A court hearing must be scheduled within seven days, or, if the person is currently detained, 72 hours excluding weekends and holidays. If the court is convinced by clear, cogent, and convincing evidence that grounds for involuntary commitment have been established, the court may commit the person to an approved treatment program for up to 60 days, if a program is available and able to provide adequate and appropriate treatment. The facility where the person is committed may subsequently file a petition to extend the commitment for up to 90 additional days.

Minors may also be subject to commitment under the CD ITA. A minor may apply for outpatient substance use disorder treatment on the minor's own behalf at 13 years of age; inpatient substance use disorder treatment requires the consent of the parent unless the child has been declared a child in need of services.

A physician assistant is a person licensed to practice medicine to a limited extent under the supervision of a licensed physician or licensed osteopathic physician.

"Substance use disorder" is a diagnostic term used by the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) published in 2013 by the American Psychiatric Association. This diagnostic term combines the characteristics of both substance abuse and substance dependence used in the previous edition (DSM-IV), and reflects current professional usage.

Between 2006 and 2009, the Legislature operated Integrated Crisis Response (ICR) pilot programs in Pierce and North Sound Regional Support Networks. ICR combines the investigation and commitment functions of a designated mental health professional (DMHP)

and DCDS into a designated crisis responder (DCR). A DCR may commit a person for short-term involuntary treatment in an E&T for treatment of a mental disorder or to a secure detoxification facility for treatment of a substance use disorder. Funding was discontinued for the pilots at the start of the recession. The Washington State Institute for Public Policy (WSIPP) published an 18-month outcome evaluation of the ICR pilots in 2011 which found that the pilots generated savings of approximately \$1.48 for every dollar spent based on reduced hospitalizations and avoidance of higher-cost E&T admissions. Employment rates increased to 45 percent among program participants, compared to 36 percent among a matched control group. The economic benefits of this were not calculated or added into the cost-benefit analysis.

Starting April 1, 2016, DSHS will contract with behavioral health organizations (BHOs), formerly called regional support networks, to oversee the delivery of treatment services to adults and children who have substance disorder treatment needs or severe mental health treatment needs. A BHO may be a county, group of counties, or a nonprofit or for-profit entity. In April 2016, 9 of the 10 BHOs will be county based, with one BHO located in Pierce County operated by a private company. A region in Southwest Washington consisting of Clark and Skamania Counties is designated as an "early adopter" region starting April 1, 2016, where behavioral health services will be integrated with physical health care services for Medicaid patients and qualifying non-Medicaid patients under the administration of managed care organizations.

A business and occupation (B&O) tax exemption allows a regional support network, BHO, or affiliated providers to deduct funds received for the purpose of providing government-funded mental health services from their tax liability. This exemption expires on August 1, 2016.

**Summary of Engrossed Third Substitute Bill:** Substantive provisions of the CD ITA are amended to become similar to MH ITA. The initial court commitment following the 72-hour detention is shortened to 14 days, with the alternative of a 90-day less restrictive alternative commitment for outpatient treatment, and the burden of proof is lowered to probable cause. Subsequent commitment is available for 90 days of treatment in an inpatient or less restrictive setting upon proof by clear, cogent, and convincing evidence. The types of practitioners authorized to petition for commitment under the CD ITA are expanded to include a psychiatric advanced registered nurse practitioner, physician assistant, or mental health professional. County prosecutors must represent petitioners for CD ITA treatment. The cost of mandatory representation of the petitioner by a county prosecutor in a substance use disorder involuntary treatment proceeding must be reimbursed by the behavioral health organization or full integration region.

Effective April 1, 2016, administrative provisions related to the state mental health program and state chemical dependency program are combined in chapter 71.24 RCW and renamed the state behavioral health program. Mental Health Advisory Boards and Mental Health Ombuds services provided by BHOs are renamed behavioral health advisory boards and behavioral health Ombuds, and the scope of these functions are expanded to include substance use disorder concerns. Provisions are expanded related to DSHS' contracting and operating authority. References to chemical dependency, alcoholism, and drug addiction are changed to "substance use disorder" throughout the code.

Effective April 1, 2018, the MH ITA and CD ITA systems for adults and children are combined into a single involuntary treatment system based on the MH ITA. DMHPs and DCDSs are renamed DCRs. DCRs must receive chemical dependency training specific to the duties of a DCR, including diagnosis of substance use dependence and assessment of risk associated with substance use. DSHS must develop a transition process for any DMHP or DCDS who wishes to become a DCR. Individuals who are detained may be detained to an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program. A definition is provided for the latter two terms. Until July 1, 2026, neither a peace officer, DCR, or a court may commit a person to a secure detoxification facility or approved substance disorder treatment program unless such a facility is available which has adequate space for the person.

It is specified that the loss of firearm rights that attends commitment under the MH ITA must apply only to persons committed under the combined involuntary treatment system who are committed for mental health treatment. Age of consent rules are expanded to allow children aged 13 to 17 years old who do not meet the definition of child in need of services to consent on their own behalf to inpatient substance use disorder treatment.

Effective April 1, 2018, the types of practitioners authorized to petition for involuntary commitment for mental health patients are expanded to include physicians assistants.

The mental health services B&O tax exemption for BHOs and BHO-affiliated providers is expanded to allow deduction of amounts received to provide government-funded chemical dependency services. The expiration date of this exemption is extended from August 1, 2016 to January 1, 2020.

WSIPP must evaluate the effect of the integration of the CD ITA and MH ITA and report to the legislature by December 1, 2020, June 30, 2021, and June 30, 2023. The evaluation must include assessment of efficiency, cost-effectiveness, outcomes for detained persons, and whether the system is sufficiently resourced with involuntary treatment beds, options for less restrictive alternatives, and funds to provide timely and appropriate treatment.

A provider of outpatient chemical dependency treatment to a minor may, at the provider's discretion, provide notice of the minor's request for treatment to the minor's parents if the provider determines that notice is in the best interest of the minor in achieving recovery.

DSHS and HCA must convene a task force to align regulations between behavioral health and primary health care settings and simplify regulations for behavioral health providers. DSHS must collaborate to reduce unneeded costs and burdens associated with excessive audits. DSHS must review its practices related to deeming accreditation by recognized behavioral health accrediting bodies as equivalent to meeting licensure requirements. DSHS and HCA must report to the Legislature on December 15, 2016. The task force must also consider means to provide notice to parents when a minor requests chemical dependency treatment which are consistent with federal privacy laws and the best interests of the minor and the minor's family. DSHS must provide a report to the Legislature on December 1, 2016.

Certain provisions related to substance use disorder programs are repealed, including provisions relating to an interdepartmental coordinating committee, comprehensive statewide regional treatment programs, and confidentiality of records.

This act does not create any new entitlement or cause of action related to civil commitment and cannot form the basis for a private right of action.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.