HOUSE BILL REPORT
ESSB 5106

As Reported by House Committee On:
Judiciary
Appropriations

Title: An act relating to clarifying obligations under the involuntary treatment act.

Brief Description: Clarifying obligations under the involuntary treatment act.

Sponsors: Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senator O'Ban).

Brief History:
Committee Activity:
Judiciary: 3/9/17, 3/23/17 [DPA];
Appropriations: 4/1/17, 4/4/17 [DPA(APP w/o JUDI)].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Revises procedures for an immediate family member, guardian, or conservator to petition for court review of an initial detention decision under the Involuntary Treatment Act (ITA), and requires the Administrative Office of the Courts to develop materials and a model detention order for these proceedings.
- Requires petitions for enforcement of less restrictive alternative (LRA) treatment orders under the ITA to be filed with the court in the county where the person who is subject to the LRA order is located, and modifies and reorganizes provisions governing enforcement proceedings.
- Revises provisions requiring a designated mental health professional to consult with an examining emergency room physician during an initial commitment evaluation.
- Provides that designated chemical dependency specialists, rather than mental health professionals, may evaluate and sign a petition for involuntary commitment of a person who may be in need of substance use disorder treatment under laws in effect until April 1, 2018, and allows chemical dependency professionals to examine and sign a petition for involuntary

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

- commitment of a person who may be in need of substance use disorder treatment under laws in effect beginning April 1, 2018.
- Requires the Department of Social and Health Services to ensure that an additional secure detoxification facility is operational by April 1 of each year beginning in 2020 until there is adequate capacity to meet the requirements for substance use disorder clients.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert and Orwall.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: Edie Adams (786-7180).

Background:

Under the Involuntary Treatment Act (ITA), a person may be ordered to undergo involuntary mental health treatment if the person, as a result of a mental disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient treatment. Designated mental health professionals (DMHPs) are responsible for investigating and determining whether an individual may be in need of involuntary treatment. The DMHP may petition for initial detention for evaluation and treatment for up to 72 hours if the person poses a likelihood of serious harm or is gravely disabled. If the person is in need of assisted outpatient treatment, the DMHP may petition for initial involuntary outpatient evaluation. After the initial 72-hour detention, the facility providing treatment may petition the court to have the person committed for further mental 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 on the basis that the person poses a likelihood of serious harm or is gravely disabled, the court must order an appropriate less restrictive course of treatment, rather than inpatient treatment, if the court finds that treatment in a less restrictive alternative (LRA) than detention is in the best interest of the person or others. If a person is found to be in need of assisted outpatient treatment, and does not pose a likelihood of serious harm and is not gravely disabled, the person may only be ordered to LRA treatment, and may not be ordered to inpatient treatment. An LRA order might require a person to reside at a specific location, participate in outpatient treatment appointments, follow treatment recommendations, and take prescribed medications.

<u>Court Review of Initial Detention Decisions</u>.
When a DMHP decides not to detain a person for evaluation and treatment, or does not take action to have a person detained within 48 hours of a request for investigation, the person's immediate family member, guardian, or conservator may petition the superior court for the

person's initial detention. The petition must include a sworn declaration of the petitioner that describes why the person should be detained for evaluation and treatment. If the court finds that the petition presents sufficient evidence, the court must order the DMHP to provide a detailed description of the investigation and decision not to file for initial detention, along with a copy of all information material to the DMHP's decision. If the court enters an order for initial detention, the court must provide the order of detention to the DMHP agency, which must execute the order without delay. An order for detention expires after 180 days.

Upon receiving a request for an investigation for an initial detention of a person, a DMHP or DMHP agency must inquire whether the request is from an immediate family member, guardian, or conservator. If the DMHP decides not to detain the person, or if the person is not detained within 48 hours, the DMHP or DMHP agency must inform the immediate family member, guardian, or conservator of the process for petitioning the court for detention.

Less Restrictive Alternative Treatment Orders.
Legislation enacted in 2015 (Engrossed Second Substitute House Bill 1450) provided increased statutory direction regarding treatment services that must be provided under an LRA order and amended the process for issuance and modification or revocation of LRA orders. Facilities and agencies overseeing treatment are authorized to take responsive actions to enforce compliance with an LRA or conditional release order, including requesting a court hearing, with the assistance of the county prosecutor, for review and modification of the order. Designated mental health professionals and the Department of Social and Health Services (DSHS) may institute proceedings for modification or revocation of an LRA order and may detain the person pending a hearing. An LRA order may be modified or revoked if the person fails to adhere to the terms and conditions of his or her release, is substantially deteriorating or decompensating, or poses a likelihood of serious harm. A petition for modification or revocation of an LRA order must be filed with the court that originally ordered commitment, and venue for the proceeding is in the court where the petition is filed. Prior to enactment of the 2015 legislation, a petition for modification or revocation of an LRA order could be filed with the court that originally ordered commitment or with the court in the county in which the person is detained.

Consultation with Emergency Room Physicians.
A DMHP evaluating a person for initial detention under the ITA must consult with any examining emergency room physician regarding the physician's observations and opinions of the person's condition and whether, in the view of the physician, it is appropriate to detain the person. The DMHP must take serious consideration of observations and opinions by examining emergency room physicians when deciding whether a person should be detained, and must document the consultation and the physician's observations or opinions regarding whether detention of the person is appropriate.

Intent language in the ITA provides that courts, when construing the requirements of the ITA, must focus on the merits of the petition, rather than procedural requirements, except in cases where the requirements have been totally disregarded. In a 2016 Court of Appeals case, *In re Detention of K.R.*, the Court overturned a 14-day commitment order on the grounds that the DMHP had totally disregarded the requirements to consult with any examining emergency

room physician, take serious consideration of the physician's observation and opinions, and document the consultation with the physician.

Chemical Dependency Evaluations and Petitions.
Under the chemical dependency involuntary treatment laws in effect until April 1, 2018, a person may be committed for chemical dependency treatment if the person, due to chemical dependency, poses a likelihood of serious harm or is gravely disabled. An initial commitment may be for a period of 14 days, or up to 90 days of LRA treatment. Upon petition, a person may be committed for involuntary treatment for a subsequent period of 90 days. The court may not order commitment of a person if an approved substance use disorder treatment program is not available. The petition must be signed by two professionals who have examined the person in the following combinations: two physicians; one physician and a mental health professional; one physician assistant and a mental health professional; or one psychiatric advanced registered nurse practitioner and a mental health professional.

Designated chemical dependency specialists (DCDSs) are responsible for investigating and determining whether to detain a person who may be in need of chemical dependency treatment. A DCDS must be certified by the Department of Health as a chemical dependency professional or meet or exceed the requirements for certification. In addition a DCDS must demonstrate knowledge of chemical dependency involuntary commitment laws and differential assessment of mentally ill and chemically dependent persons.

Integrated Treatment System for Mental Health and Substance Use Disorders.
Legislation was enacted in 2016 (Engrossed Third Substitute House Bill 1713) to integrate the involuntary mental health and substance use disorder treatment systems effective April 1, 2018. Under the integrated system, a designated crisis responder (DCR) is responsible for conducting an evaluation for civil commitment based on the presence of a mental disorder or substance use disorder. The DCR may detain the person to an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment facility. After initial detention, the treating facility or the DCR may petition for 14-day involuntary detention or 90-day LRA for mental health or substance use disorder treatment. The petition must be signed by two professionals who have examined the person, in the following combinations: two physicians; one physician and a mental health professional; one physician assistant and a mental health professional; or one psychiatric advanced registered nurse practitioner and a mental health professional.

Commitment to a secure detoxification facility or approved substance use disorder treatment program is contingent upon facility or program availability and adequate space until July 1, 2026. The DSHS must ensure that at least one secure detoxification facility is operational by April 1, 2018, and that an additional secure detoxification facility is operational by April 1, 2019. If at any time during the implementation of secure detoxification facility capacity, federal funding becomes unavailable for federal match for services provided in these facilities, the DSHS must discontinue the expansion pending further direction by the Legislature.

Separate legislation enacted in 2016 (Substitute Senate Bill 6445) amended various provisions of the ITA to include physician assistants when working with a supervising

psychiatrist among the list of mental health professionals that are authorized to examine and evaluate or detain persons for involuntary treatment. A physician assistant is a person who is licensed to practice medicine to a limited extent under the supervision of a physician and who is academically and clinically prepared to provide health care services and perform diagnostic, therapeutic, preventative, and health maintenance services. One provision of the ITA designating the professionals who qualify to serve as designated crisis responders under the integrated system does not include physician assistants working with a supervising psychiatrist.

Summary of Amended Bill:

Court Review of Initial Detention Decisions.
A petition for initial detention filed by a family member, guardian, or conservator must be filed within 10 calendar days following the designated mental health professional (DMHP) investigation or request for a DMHP investigation. If more than 10 days have elapsed, the family member, guardian or conservator may request a new DMHP investigation. A DMHP or DMHP agency must, upon request, disclose the date of a DMHP investigation to an immediate family member, guardian, or conservator of a person investigated.

If a court enters an order for initial detention, the court must issue a written order for apprehension of the person by a peace officer for delivery of the person to a facility or emergency room. The order of detention should contain the advisement of rights the person would receive if the person were detained by a DMHP. The DMHP serving the jurisdiction of the court must collaborate and coordinate with law enforcement in the apprehension and detention of the person, including sharing information relating to risk and information that will assist in locating the person.

By December 15, 2017, the Administrative Office of the Courts (AOC) must develop a user's guide to assist pro se litigants in the preparation and filing of a petition for initial detention and develop a model order of detention that contains an advisement of rights for the detained person. In developing these materials, the AOC must collaborate with stakeholders including judges, prosecutors, defense attorneys, the Department of Social and Health Services (DSHS), behavioral health advocates, and families.

Less Restrictive Alternative Treatment Orders.
A petition for revocation of a less restrictive alternative (LRA) order, and order of apprehension and detention, must be filed with the court of the county where the person is currently located or being detained. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition is filed, within two judicial days of the person's detention.

A provision allowing facilities and agencies overseeing treatment to request a court hearing, with the assistance of the prosecutor, for review and modification of an LRA order is eliminated, and requirements governing modification or revocation petitions are reorganized into one provision governing enforcement proceedings.

Consultation with Emergency Room Physicians.
The requirement that a DMHP consult with any examining emergency room physician when determining whether a person should be detained is revised. If a person subject to evaluation under the Involuntary Treatment Act (ITA) is located in an emergency room at the time of evaluation, the DMHP must take serious consideration of observations and opinions by an examining emergency room physician, advanced registered nurse practitioner, or physician assistant in determining whether detention is appropriate. If the examining professional is not available for consultation, the DMHP must document his or her review of the professional's written observations or opinions regarding whether detention of the person is appropriate.

The requirement that a DMHP consult with and take serious consideration of an examining professional's observations and opinions does not create an exception to the general rule stated in the ITA that courts should decide ITA petitions on their merits in light of the state's parens patriae or police power interest in protecting the safety of individuals and the public.

Chemical Dependency Evaluations and Petitions.
Designated chemical dependency specialists replace mental health professionals in the list of qualified professionals that may examine and sign a petition for involuntary commitment of a person who may be in need of substance use disorder treatment under the chemical dependency laws in effect until April 1, 2018. References to "chemical dependency" and "chemical dependency treatment" are changed to "substance use disorder" and "substance use disorder treatment."

Integrated Treatment System for Mental Health and Substance Use Disorders.
Under the integrated mental health and substance use disorder treatment system, chemical dependency professionals are included in the definition of "professional person." If a person is being evaluated or detained based on a substance use disorder, a chemical dependency professional, rather than a mental health professional, may evaluate the person or sign a petition for commitment of the person for involuntary substance use disorder treatment.

The DSHS must ensure that an additional secure detoxification facility is operational by April 1 of each year beginning in 2020 until there is adequate capacity to meet the involuntary treatment requirements for substance use disorder clients.

Physician assistants working with a supervising psychiatrist are added to a section designating the mental health professionals that may qualify as designated crisis responders for the purposes of the involuntary mental health and substance use disorder treatment systems.

Amended Bill Compared to Engrossed Substitute Bill:

Under provisions governing court review of initial detention decisions, an immediate family member or guardian may, rather than must, request a new designated mental health professional (DMHP) investigation when more than 10 days have passed since the DMHP investigation or request for investigation. The procedures for enforcement of less restrictive alternative (LRA) orders are revised and a provision allowing a treating facility or agency to directly file a court petition for review and modification of an LRA order is eliminated.

Designated chemical dependency specialists, rather than chemical dependency professionals, replace mental health professionals in the list of qualified professionals that may examine and sign a petition for involuntary commitment of a person under the chemical dependency laws in effect until April 1, 2018. Under the integrated treatment system, a chemical dependency professional may evaluate a person and sign a commitment petition only in the case of a person who is being evaluated or detained for substance use disorder treatment. Psychiatric advanced registered nurse practitioners, rather than advanced registered nurse practitioners, are retained in the list of professionals who may examine and sign commitment petitions for persons who may be in need of involuntary treatment. The Department of Social and Health Services must ensure that an additional secure detoxification facility is operational by April 1 of each year beginning in 2020 until there is adequate capacity to meet the involuntary treatment requirements for substance use disorder clients. Physician assistants working with a supervising psychiatrist are added to a section designating the mental health professionals that may qualify as designated crisis responders for the purposes of the integrated treatment system.

Appropriation: None.

Fiscal Note: Requested on March 23, 2017.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 2, 4, 9, 12, 14, 15, 17, 18, and 19 which because of prior delayed effective dates take effect April 1, 2018, sections 10 and 16, which because of prior delayed effective dates take effect July 1, 2026, and section 13, relating to substance use disorder treatment under laws in effect until April 1, 2018 which contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Judiciary. Signed by 26 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Cody, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Nealey, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger, Vick and Wilcox.

Minority Report: Do not pass. Signed by 6 members: Representatives Buys, Condotta, Manweller, Schmick, Taylor and Volz.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

A provision was removed which stated that the requirement for a designated mental health professional to consult with and take serious consideration of an examining professional's observations and opinions does not create an exception to the general rule that courts should decide involuntary treatment act petitions on their merits in light of the state's police power interest in protecting the safety of individuals and the public.

Appropriation: None.

Fiscal Note: Requested on March 23, 2017.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 2, 4, 9, 12, 14, 15, 17, 18, and 19, which because of prior delayed effective dates take effect April 1, 2018, sections 10 and 16, which because of prior delayed effective dates take effect July 1, 2026, and section 13, relating to substance use disorder treatment under laws in effect until April 1, 2018, which contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

(Other) The bill requires that a peace officer or designated mental health professional deliver individuals being detained to an emergency room or other facility. Language should be added to require that prior to delivering the individual, contact is made to ensure the facility is willing and able to provide the person with timely and appropriate treatment.

Persons Testifying: Len McComb, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.