

# FINAL BILL REPORT

## ESSB 6491

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Synopsis as Enacted

**Brief Description:** Increasing the availability of assisted outpatient behavioral health treatment.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators O'Ban and Darneille).

**Senate Committee on Human Services & Corrections**

**Senate Committee on Ways & Means**

**House Committee on Judiciary**

**House Committee on Appropriations**

**Background:** The Involuntary Treatment Act (ITA) allows for the detention of a person for involuntary mental health treatment when, as a result of a mental disorder, the person is found by a designated mental health professional (DMHP), court, or jury to present a likelihood of serious harm to themselves, others, or the property of others, or to be gravely disabled. Gravely disabled is a standard that recognizes a present or developing risk of harm based on a person's inability to care for their essential health or safety needs. Effective April 1, 2018, the ITA will be expanded to include consideration of risks of harm related to a substance use disorder, and DMHPs, the mental health professionals who serve as the gatekeepers of the ITA system, will be renamed designated crisis responders (DCRs) and be required to have training in diagnosis and assessment of risk related to substance use disorders.

Less Restrictive Alternative (LRA) Treatment. State law, backstopped by various court decisions, requires involuntary civil treatment to be provided in the least restrictive environment that will meet the needs of the person and the community. An order for involuntary treatment in an outpatient setting is called a LRA order. A court or jury may impose an order for LRA treatment following a period of secure detention for either 90 or 180 days if it finds that the person continues to meet the criteria for involuntary treatment and that the person's needs can be met by a LRA. State law establishes required components for a LRA order both for the person subject to the order and for an outpatient treatment agency which agrees to provide LRA treatment, including the assignment of a care coordinator, scheduling an intake evaluation and psychiatric evaluation, establishing a schedule of regular contacts between the person and the provider of LRA treatment, and medication management. A DMHP may file a court petition to extend a LRA order for up to an additional 180 days per petition filed.

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*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.*

Enforcement of an LRA Order. If a person is suspected not to be adhering to the terms of a LRA order, or suspected to be experiencing substantial deterioration, substantial decompensation, or to pose a substantial likelihood of serious harm while subject to a LRA order, an agency or facility designated to provide LRA treatment or a DMHP may take a range of actions to enforce or modify the LRA. A DMHP or the secretary of the Department of Social and Health Services (DSHS) may revoke the LRA by placing the person in secure detention for inpatient treatment and filing a petition for revocation with the court. In this event, the court must schedule a hearing within five days of the filing of the petition for revocation. The court must determine whether:

- the person has adhered to the terms of the LRA;
- substantial deterioration in functioning has occurred;
- there is evidence of substantial decompensation with a reasonable probability that it can be reversed by inpatient treatment; or
- there is a likelihood of serious harm.

If the court makes one of the findings listed above, they must determine whether it should reinstate or modify the LRA, or order a further period of detention for inpatient treatment, up to the remaining time on the LRA order.

Assisted Outpatient Mental Health Treatment (AOMHT). In 2015, the Legislature adopted E2SHB 1450 establishing AOMHT in Washington. AOMHT is based on Kendra's Law, an assisted outpatient treatment law adopted in the State of New York in 1999, and subsequently adapted for adoption by a number of other states. AOMHT is a process by which a DMHP may file a petition requesting LRA treatment for a person before the person meets criteria for detention under the ITA, and without placing the person in detention for inpatient treatment. To file a petition for AOMHT, a DMHP must first determine through an investigation that a person meets criteria for assisted outpatient treatment, during which the person may not be detained for longer than 6 or 12 hours. An AOMHT petition must subsequently be filed in court by two licensed professionals who have examined the person and consulted with an agency which agrees to provide LRA treatment to the person. At least one of these professionals must be a physician, psychiatric advanced registered nurse practitioner, or physician assistant. This petition must be reviewed in superior court within 72 hours following the conclusion of the DMHP investigation, excluding weekends and holidays. A person subject to a petition for AOMHT may not be detained for inpatient treatment. If such a person does not adhere to the conditions of the LRA order, or experiences substantial deterioration, substantial decompensation, or a likelihood of serious harm, a DMHP may not revoke the LRA by placing the person in secure detention for inpatient treatment.

To be eligible for AOHMT, a DMHP, court, or jury must find that a person, as the result of a mental disorder:

- has been placed in detention by a court for involuntary mental health treatment at least twice during the preceding 36 months;
- is unlikely to voluntarily participate in outpatient treatment without a LRA order, based on history or current behavior;
- is unlikely to survive safely in the community without supervision;
- is likely to benefit from LRA treatment; and

- requires LRA treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or becoming gravely disabled within a reasonably short period of time.

**Summary:** AOMHT is expanded to include a need for treatment related to a substance use disorder, and renamed assisted outpatient behavioral health treatment (AOBHT).

Eligibility requirements for AOBHT are reduced by eliminating the requirement that a person is unlikely to survive safely in the community without supervision and reducing the requirement of two occasions to one occasion that the person has been detained by a court for involuntary treatment during the preceding 36 months.

The initial petition process for AOBHT is extended and simplified as follows:

- the time for a DCR to complete an initial AOBHT investigation is extended to 48 hours, provided that the person may not be detained for the investigation for any period longer than allowed by current law;
- the AOBHT petition may be filed by the DCR alone, without a declaration from a second licensed professional;
- the time for superior court review of the AOBHT petition is extended to within five judicial days of filing the petition; and
- the DCR must provide the person with a summons to the court hearing, along with designation of appointed counsel and proof of services as provided in current law.

For a person with a LRA commitment based solely on an AOBHT petition, revocation procedures are changed to allow a DCR or DSHS to order the person to be apprehended and taken into custody and temporary detention for inpatient evaluation for up to 72 hours, excluding weekends and holidays, in an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment facility. A court hearing must be scheduled to determine whether to continue the detention after the 72 hour period. To continue the detention, the court must find that the person, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm or is gravely disabled and no LRA is available which is in the best interest of the person or others.

Requirements for LRA providers are expanded to include notification to the care coordinator if reasonable efforts to engage the person committed to LRA treatment fail to produce substantial compliance with court-ordered treatment conditions.

Effective April 1, 2018, the remedies available to an immediate family member, guardian, or conservator of a person based on a petition for court review of a DCR's failure to detain a person under the ITA are expanded to include a request to order the DCR to file a petition for AOBHT.

If a person subject to a AOBHT petition is in the custody of a jail or prison at the time of the DCR investigation, the superior court may schedule its review hearing within five judicial days following the person's anticipated release date from custody. The hearing may be held while the person is still in jail or prison custody, provided that the process does not extend the person's time in custody, the hearing must be held within three judicial days of the filing of the petition, the criminal charges must not be a pretext for the purposes of filing a petition

under the ITA, and the person's release from custody must be expected to quickly follow the adjudication of the petition.

Medication management is eliminated as a mandatory service under a LRA, but is added as an optional LRA treatment service. A DCR must be appointed by the county, and entity appointed by the county, or the behavioral health organization.

**Votes on Final Passage:**

Senate	46	1	
House	92	5	(House amended)
Senate	48	1	(Senate concurred)

**Effective:** April 1, 2018 (Sections 1-4, 6, 7, 9, 11-13, and 15)  
June 7, 2018  
July 1, 2026 (Sections 5, 8, and 10)