

HOUSE BILL REPORT

ESHB 2099

As Amended by the Senate

Title: An act relating to the use of video technology under the involuntary treatment act.

Brief Description: Concerning the use of video technology under the involuntary treatment act.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Irwin and Jinkins).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/22/19 [DPS].

Floor Activity:

Passed House: 1/16/20, 96-0.

Senate Amended.

Passed Senate: 3/5/20, 49-0.

Brief Summary of Engrossed Substitute Bill

- Defines "video," under the Involuntary Treatment Act (ITA), as the delivery of health care services through the use of interactive audio and visual technology permitting real-time communication between a person and a designated crisis responder (DCR) for the purpose of evaluation, with certain exceptions.
- Provides that a DCR may perform ITA evaluations by video provided that a licensed health care professional or professional person is present.
- Clarifies that "presence at a proceeding" under the ITA means participation either in person or by video as provided in the definition of "hearing" in the ITA.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

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.

Staff: Ingrid Lewis (786-7289).

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 he or she, 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 behavioral health treatment. A designated crisis responder (DCR) is a mental health professional responsible for investigating and determining whether a person may be in need of involuntary treatment. If the DCR finds a basis for commitment, the DCR may detain the person for up to 72 hours, excluding weekends and holidays, to an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment facility. Designated crisis responders are designated by a county, entity appointed by a county, or the behavioral health organization in a region.

Under the ITA, a DCR is responsible for conducting an evaluation and investigation based on relevant, credible, and timely information to determine if:

- there is evidence that a referred person may suffer from a mental health disorder or substance use disorder;
- there is evidence that the person, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm to themselves, other people, other's property, or the referred person may be gravely disabled; and
- the referred person refuses to seek appropriate treatment options, and no less restrictive alternative is available.

An evaluation and investigation must occur before a petition for detention is filed.

Evaluation Timeframes.

When a person is held for initial evaluation in an emergency room and refuses voluntary treatment, a DCR must detain the person to an appropriate facility or release the person within six hours of a referral for evaluation, not counting the time period prior to medical clearance.

When a person is taken to a crisis stabilization unit, evaluation and treatment facility, emergency department, triage facility, secure detoxification facility, or approved substance use disorder treatment program by law enforcement, a mental health professional must examine the person within three hours of arrival at the facility, and a DCR must determine within 12 hours of a referral for evaluation whether detention is warranted.

Court Proceedings.

Within the initial 72-hour evaluation period, the professional staff of the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment facility may petition the court to have a person committed for further behavioral health treatment. Following a hearing, the court may order the person to be involuntarily committed for up to 14 days of additional treatment. 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. A person must be present at a hearing,

which is defined in the ITA as any proceeding conducted in open court. In a hearing pursuant to the ITA, parties may participate either in person or by video, provided that: (1) all parties are able to see, hear, and speak during the hearing; (2) attorneys are able to use exhibits and other materials; and (3) the attorney for the person subject to the petition is in the same location as the person, unless otherwise requested by the person or the attorney. The court may require all parties to participate in person upon its own motion or motion for good cause by any party. The court may consider whether the person's behavioral health affects the person's ability to perceive or participate in the proceeding by video.

Summary of Engrossed Substitute Bill:

A designated crisis responder (DCR) may conduct evaluations under the Involuntary Treatment Act (ITA) by video provided that a licensed health care professional who can adequately and accurately assist with obtaining any necessary information is present at the time of the evaluation.

"Video" is defined as the delivery of health care services through the use of interactive audio and visual technology permitting real-time communication between a person and a designated crisis responder (DCR) for the purpose of evaluation. The term does not include the use of audio-only telephone, facsimile, electronic mail, or store and forward technology. "Store and forward technology" is defined as the use of an asynchronous transmission of a person's medical information from a mental health service provider to a DCR, which results in medical diagnosis, consultation, or treatment.

Court Proceedings.

"Presence at a proceeding" under the ITA means participation either in person or by video as provided in the definition of "hearing" in the ITA.

EFFECT OF SENATE AMENDMENT(S):

Provisions in the underlying bill are retained, except for the removal of the section pertaining to presence at a proceeding, as presence is addressed in the definition of "hearing" in the statute. The requirement that a licensed health care professional or professional person assisting with the video evaluation is present during the evaluation is clarified to require that the professional must be with the person being evaluated during the interview.

Appropriation: None.

Fiscal Note: Available (for HB 1678, which is identical to HB 2099 except for the title).

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 3 and 5, relating to the expiration of language stating that commitments to secure detoxification facilities and approved substance use disorder treatment programs are subject to facility availability and available space, which take effect on July 1, 2026.

Staff Summary of Public Testimony:

(In support—from testimony on HB 1678, which is identical to HB 2099 except for the title, on February 8, 2019) When a person suffering from a mental health crisis is brought into an emergency room, in many parts of the state there are not enough designated crisis responders (DCR) available to do the involuntary treatment screenings. The person remains in the emergency room for a period of time, sometimes days, in restraints, before receiving an evaluation to determine whether a 72-hour detention will occur. This bill allows the behavioral health system to use the modern technology already being used in the medical system. If a person is being evaluated for involuntary treatment, they must be with a person who is able to answer any questions that the DCR may have.

The DCR role is important and, as time is of the essence, allowing for a video-based interview will provide limited DCR resources an additional option in meeting their obligations. These interviews would align with practices that are currently being used in the system. Video-based testimony is already occurring in court proceedings for both patient, as well as officer, provided testimony.

This bill will be helpful for rural hospitals and other facilities.

(Opposed—from testimony on HB 1678, which is identical to HB 2099 except for the title, on February 8, 2019) Video evaluations are not productive or meaningful. A person in an emergency room who is experiencing a mental health crisis is at times tired, hungry, and scared. Imagine how someone would react to a screen displaying a stranger asking personal questions; it may activate delusions. There are privacy concerns with a video evaluation occurring in an emergency room. It will be difficult for the DCR to make an informed decision based on what can be communicated via video, and this can lead to the deprivation of a person's liberty. Convenience is not justification for the change in practice.

Persons Testifying: (In support—from testimony on HB 1678, which is identical to HB 2099 except for the title, on February 8, 2019) Representative Irwin, prime sponsor; Daniel Nelson, Seattle Police Department; and Chris Bandoli, Washington State Hospital Association.

(Opposed—from testimony on HB 1678, which is identical to HB 2099 except for the title, on February 8, 2019) Mike De Felice, King County Department of Public Defense, Washington Defender Association, and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.