

HOUSE BILL REPORT

2E2SSB 5720

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the involuntary treatment act.

Brief Description: Concerning the involuntary treatment act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Wagoner and Kuderer).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/20/19, 3/28/19 [DPA], 2/21/20, 2/28/20 [DPA].

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

- Modifies the definition of "likelihood of serious harm" and "grave disability" under the adult and minor Involuntary Treatment Act (ITA) statutes.
- Increases the initial detention period from 72 hours to 120 hours, not counting weekends and holidays, beginning January 1, 2021.
- Provides that a designated crisis responder may perform ITA evaluations by video provided that a licensed health care professional or professional person is present.
- Imports numerous provisions from the adult ITA to the minor ITA, and makes numerous other changes to adult and minor ITA provisions.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 14 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Graham, Hansen, Kirby, Klippert, Orwall, Peterson, Rude, Valdez, Walen and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

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) statutes for adults and minors set forth the procedures, rights, and requirements for involuntary treatment. The provisions governing involuntary treatment of minors over the age of 13 are parallel with the adult ITA in many respects. Jurisdiction over involuntary treatment proceedings is with the superior court. County prosecutors represent petitioners, unless the petitioner is a state facility, in which case the Attorney General provides representation.

Under the ITA statutes, a person may be committed by a court for involuntary treatment if he or she, due to a mental health or substance use disorder, poses a likelihood of serious harm or is gravely disabled and will not consent to voluntary treatment. "Likelihood of serious harm" means that a person poses a substantial risk that:

- physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
- physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm;
- physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or
- for adults, the person has threatened the physical safety of another and has a history of one or more violent acts.

"Grave disability" means that a person is in danger of serious physical harm due to a failure to provide for his or her own essential human needs, or that a person manifests a severe deterioration in routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions, and is not receiving the care essential for health or safety. An adult may also be committed for involuntary treatment if he or she is in need of assisted outpatient behavioral health treatment.

Designated crisis responders (DCR) are responsible for investigating and determining whether a person may be in need of involuntary treatment. A person may be held in a facility for up to 12 hours for a DCR investigation, provided that they must be examined by a mental health professional within three hours of arrival, not counting time periods prior to medical clearance. 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. The DCR may petition the court for initial detention at an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program for evaluation and treatment for up to 72 hours, excluding weekends and holidays, if the person poses a likelihood of serious harm or is gravely disabled.

Procedures and Rights.

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 probable cause hearing, if the person is found by a preponderance of the evidence to pose a likelihood of serious harm or to be gravely disabled, the court may order the person to be involuntarily committed for up to 14 days of additional treatment. Upon subsequent petitions and hearings, if commitment criteria are met by clear, cogent, and convincing evidence, a court may order up to an additional 90 days of commitment for adults or 180 days for minors at a state hospital. Successive terms of up to 180 days of commitment may be ordered if the grounds for commitment persist.

In the adult ITA, a petition for a 90-day and 180-day commitment must be filed at least three days before the expiration of the respective 14-day and 90-day commitment. In the minor ITA, the petition must be filed at least five days before the expiration of the current commitment period.

A person subject to commitment is afforded numerous rights and due process protections, including, but not limited to, the right to an attorney and the right to be present at all proceedings. Presence may be waived at trial settings. Only at a 90-day commitment hearing is there a requirement for the person to be present at a hearing.

A person who has been detained for a 72-hour evaluation and treatment on the grounds that the person presents a likelihood of serious harm, but not committed for an additional 14 days, is prohibited from possessing guns for six months after the date of detention. The DCR must inform the person of this six-month prohibition orally and in writing before discharge. The person must surrender any concealed pistol license and any firearms they possess or control to the sheriff or chief of police where the person lives. The person's right to possess a firearm is restored automatically at the end of the six-month period, and any surrendered firearms must be returned. The person may petition the superior court to restore their right to possess a firearm before the end of the six-month period by following restoration procedures under law.

Less Restrictive Alternative Treatment. When entering an order for involuntary mental health treatment, if a court finds that a less restrictive alternative (LRA) to inpatient commitment is in the best interest of the person or others, the court must order an appropriate less restrictive course of treatment.

Certain services are required under an LRA order and are statutorily outlined in the adult ITA. Less restrictive alternative treatment is for up to 90 days if ordered instead of a 14- or 90-day inpatient order, and up to 180 days if ordered instead of a 180-day inpatient order. Upon request by a party, an LRA order may be modified or revoked if the person is failing to adhere to the terms and conditions of the court-ordered treatment, is substantially deteriorating or decompensating, or poses a likelihood of serious harm.

Continuances. The granting of continuances in ITA proceedings is limited by statute and court rule, depending on the grounds. On a petition for a 14-day commitment or 90-day LRA

treatment, a continuance is not to exceed: 48 hours, on request of the respondent or their attorney; 24 hours upon the petitioner's showing of good cause; or no more than 14 days for physical conditions needing hospitalization. On a petition for a 90-day commitment, the hearing must occur within five judicial days of the first court appearance after the probable cause hearing, and a continuance must not exceed five additional judicial days on a motion for good cause by the respondent.

Court rule permits continuance or postponement for a reasonable time on a motion for good cause, or as required in the proper administration of justice, if the respondent consents or will not be substantially prejudiced.

Involuntary Medication. Involuntary medication may only be administered in an inpatient setting and only by following certain procedures. A person has the right to refuse psychiatric medication beginning 24 hours prior to the probable cause hearing unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary treatment, and there is no less intrusive course of treatment. There must be an attempt to obtain the person's informed consent prior to the administration of the antipsychotic medication, and for short-term treatment of up to 30 days, there must be an additional concurring medical opinion approving the medication. For treatment periods of 30 days or longer, a petition must be filed to obtain a court order alleging a lack of medically acceptable alternatives that are likely to be successful.

Single-Bed Certification.

A single-bed certification authorizes the Health Care Authority (HCA) to certify a single bed for an ITA detention outside of an evaluation and treatment facility in certain circumstances. The detained person can temporarily receive involuntary inpatient mental health treatment services from a licensed facility that is not currently certified as an evaluation and treatment facility if the facility attests that it is willing and able to provide timely and appropriate mental health treatment. Single-bed certifications are available for patients who are detained based on a mental disorder, but are not available for patients detained based on a substance use disorder.

Civil Conversions from the Forensic System.

A person who has had nonfelony charges dismissed due to incompetency to stand trial may be referred for an evaluation for civil commitment under the ITA within 48 hours of a release from jail, or directly detained to an evaluation and treatment facility, depending on the seriousness of the offense. If the court finds a history of one or more violent acts, the person is barred from possessing a firearm until the court restores the right to possess a firearm. The court must notify the defendant verbally and in writing of the bar to firearm possession. The court must forward the defendant's identification information to the National Instant Criminal Background Check system and to the Department of Licensing.

If the person is not subsequently detained, the DCR or treatment facility must present the decision to not detain to the superior court, which must hold a review hearing. In certain circumstances, a surety hearing must be ordered when the court has overridden the decision of the DCR or treatment facility.

A person who has had felony charges dismissed due to incompetency may be detained at a treatment facility for up to 72 hours for an evaluation for civil commitment under the ITA. The treatment facility may file a 180-day petition, and the defendant may be ordered to commitment if the petitioner can prove that the person presents a substantial likelihood of repeating similar criminal acts. Current law does not allow a treatment facility to file a 90-day petition on the grounds of grave disability or likelihood of serious harm.

State Agency Administration of the Involuntary Treatment Act.

The HCA is the state behavioral health authority that contracts with behavioral health organizations statewide to oversee the delivery of mental health and substance use disorder services for adults and minors, including involuntary treatment services.

The Department of Health is responsible for certifying and licensing behavioral health service providers, including evaluation and treatment facilities, secure detoxification facilities, and approved substance use disorder treatment facilities, and establishing minimum standards for service provision.

The Department of Social and Health Services operates and maintains three state-owned psychiatric inpatient hospitals for the care of adults and minors with mental illnesses: the Western and Eastern State Hospitals, which serve adults, and the Child Study and Treatment Center, which serves minors.

Summary of Amended Bill:

The reference to "routine functioning" in the definition of "gravely disabled" is removed and replaced with "safe behavior." "Severe deterioration from safe behavior" is defined to mean that a person will suffer or continue to suffer severe and abnormal mental, emotional, or physical distress if not treated, and that the distress is associated with significant impairment of judgement, reason, or behavior.

"Likelihood of serious harm" to others is expanded to include behavior which has caused substantial pain or which places other people in reasonable fear of harm to themselves or others.

"Violent act" is expanded to mean behavior that resulted in injury or substantial loss to property.

Beginning January 1, 2021, the period for initial detention under the Involuntary Treatment Act (ITA) is increased from 72 hours to 120 hours, excluding weekends and holidays.

A treating facility may file a petition for initial detention and proof of service at the request of the designated crisis responder (DCR) in instances when a person is detained for treatment in a different county from where the person was initially detained.

Timeframes provided for continuances are removed, and the court rule is adopted. Involuntary commitment hearings may be continued for good cause or as required in the

proper administration of justice if the committed person consents or will not be substantially prejudiced.

The requirement that a committed person personally appear at the trial setting date after the filing of a 90-day petition is removed. The requirement that a person must personally appear at the 90-day or 180-day hearing is also removed.

References to "mental health" and "substance use" are changed to "behavioral health."

Adult Involuntary Treatment Act.

A new definition of "written order of apprehension" is added to mean a court order for a peace officer to detain a person for involuntary treatment. Written orders of apprehension must be entered into the Washington Crime Information Center Database.

Chemical dependency professionals are added to the list of persons able to perform the examination required within three hours of a peace officer's delivery of a person at a facility.

A DCR may conduct evaluations under the ITA by video provided that a licensed health care professional who can adequately and accurately assist with obtaining any necessary information is present with the person being interviewed at the time of the evaluation. "Video" is defined as the delivery of behavioral health services through the use of interactive audio and visual technology permitting real-time communication between a person and a 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.

An initial petition for nonemergent detention or 14-day commitment must be dismissed if a court does not subsequently issue a detention or commitment order.

In addition to informing a person who has been detained for up to 72 hours of the six-month suspension of the right to possess firearms, a DCR must also notify the sheriff of the county or the chief of police of the municipality in which the person is domiciled. Prior to returning a firearm that has been surrendered by a person who has been detained, the law enforcement agency must verify with the prosecuting attorney's office or DCRs that the person has not been previously or subsequently committed for 14 days of involuntary treatment.

The right to treatment by spiritual means is clarified to be in addition to treatment otherwise proposed. A person's right to reasonable choice of an available physician, physician assistant, psychiatric advanced registered nurse practitioner, or other person qualified to provide evaluation or treatment services under the ITA is created, subject to provisions and regulations related to single-bed certification.

Surety hearing provisions are removed.

A treatment facility may, without an evaluation by a DCR, directly file a 90-day involuntary treatment petition on the grounds of grave disability or likelihood of serious harm for a defendant who has had a felony charge dismissed due to incompetency.

Provisions related to the suspension and restoration of firearms possession for a person who has a nonfelony charge dismissed based on their incompetency are modified to provide that a copy of the person's driver's license or identicaid, or comparable identification such as their name, address, and date of birth must be included with the notification of suspension or restoration forwarded by the court to the Department of Licensing.

A less restrictive alternative (LRA) treatment provider or designee is authorized to administer outpatient involuntary medication to a person on an LRA, provided that:

- there is a court order authorizing involuntary medication as part of the LRA order;
- the provider has attempted and failed to obtain consent from the person;
- the person had previously been provided involuntary medication during the commitment period; and
- there is a concurring medical opinion approving the medication by medical professionals specified in the act.

A request to modify or revoke an LRA order may be made by a court, in addition to a party. Inpatient treatment periods following the revocation of an LRA order are clarified. If the LRA order was as a result of a 14-day petition or a petition for assisted outpatient behavioral health treatment, the inpatient period must be for 14 days. If the LRA order was as a result of a 90- or 180-day petition, the inpatient period is the number of days remaining on the LRA order.

Minor Involuntary Treatment Act.

Various provisions from the adult ITA are imported into the minor ITA, including:

- numerous definitions, including a definition for "history of one or more violent acts," which in the minor ITA refers to the period of time five years prior to the filing of a petition, excluding time spent, but not any violent acts committed in a mental health facility, a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction;
- authorization for a peace officer to take a person into custody and deliver them to specified facilities based on reasonable cause to believe that the person meets detention criteria, except that delivery of a minor to a secure detoxification facility or approved substance use disorder treatment program is subject to availability of beds until July 1, 2026;
- certain patient rights provisions, including the right to an inventory of possessions upon entry into involuntary detention;
- authorization for a facility to detain a person who has been arrested for up to eight hours following drop-off by a peace officer;
- the duty to warn or take reasonable precautions to protect others from violent behavior, which the facility may discharge by reasonable efforts to communicate the threat to a victim or victims and law enforcement personnel;
- language protecting dismissal of a petition based on a failure to meet timeliness requirements, provided that the delays are not a result of a facility or DCR's total disregard of the requirements;

- the Joel's Law remedy available to an immediate family member or guardian or conservator of a person based on a petition for court review of a DCR's decision to not detain a person under the ITA;
- utilizing prior history evidence which resulted in repeated hospitalizations or peace officer interventions resulting in juvenile charges, when determining whether an inpatient or LRA commitment is appropriate; and
- provisions related to the financial responsibility for ITA services provided outside of a facility maintained and operated by the Department of Social and Health Services (DSHS).

A court may consider school behavioral issues, the impact on the family, the safety of other children in the household, and the developmental age of the minor when determining whether a new less restrictive alternative should be ordered.

The venue for the detention or revocation hearing of a minor is limited to the county where treatment is being provided.

A facility may restrict a minor's ability to access counsel during the initial detention period if there is an immediate risk of harm to the minor or others.

The time frame to file a 180-day petition is shortened from five days before the expiration of the current commitment period to three days.

Miscellaneous.

The Washington State Supreme Court is requested to adopt rules regarding access to files and records of court proceedings under the adult and minor ITA statutes by certain state agencies and persons.

Interpreters in an involuntary commitment hearing may appear by video, unless the court on its own motion or for good cause requires all parties and witnesses to appear in person.

Involuntary Treatment Act Work Group.

The Health Care Authority (HCA) must convene an ITA work group to evaluate the implementation of the act, including implementation of the 120-hour detention standard and other vulnerabilities in the involuntary treatment system.

Membership of the work group must consist of not more than 18 members appointed by the Governor, including, but not limited to:

- representatives from the HCA, the DSHS, and the Department of Health;
- certified short-term and long-term ITA providers, including providers who accept single-bed certifications;
- prosecuting and defense attorneys;
- family members and persons with lived experience of behavioral health disorders and advocates;
- DCRs;
- behavioral health administrative services organizations and managed care organizations;
- law enforcement;

- two behavioral health peers;
- the Office of the Attorney General; and
- judicial officials in involuntary treatment cases.

Interested legislators and legislative staff may participate, and the Governor must request participation by a representative of tribal governments. Staff support must be provided by the HCA.

Recommendations and a report must be submitted to the Governor and appropriate committees of the Legislature by January 1, 2021, and June 30, 2022.

Amended Bill Compared to Second Engrossed Second Substitute Bill:

In adult Involuntary Treatment Act (ITA) provisions, the striking amendment requires an initial petition for nonemergent detention or 14-day commitment be dismissed if a court does not subsequently issue a detention or commitment order and adds sections related to firearm rights suspension notice provisions.

In the minor provisions, the striking amendment provides that a court may consider school behavioral issues, the impact on the family, the safety of other children in the household, and the developmental age of the minor when determining whether a new less restrictive alternative should be ordered and adds teachers and school personnel as individuals who may be considered credible witnesses in a detention investigation for a minor.

Two behavioral health peers and the Office of the Attorney General are added to the ITA work group, and the Office of the Governor is added to the list of persons receiving recommendations and reports from the work group.

Language in the underlying bill authorizing single-bed certification for a person who is detained based on a substance use disorder is removed.

Finally, the striking amendment makes technical amendments, including conforming amendments.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 12, 15, 18 through 22, 25, 31, 33, 35, 38, 54, 58, 74, 80, 83, 86, and 89, relating to implementation of the 120-hour initial detention standard, which take effect January 1, 2021, and sections 13, 16, 26, 39, 45, 55, 77, 81, 84, 90, 92, and 95, relating to prior delayed effective dates, which take effect July 1, 2026.

Staff Summary of Public Testimony:

(In support) The Involuntary Treatment Act (ITA) statutes should be about keeping people safe and making sure that people are not a danger to themselves or others. A serious mental illness takes away a person's ability to see that they need help and during episodes of psychosis, a person makes poor decisions. Many become involved in the criminal justice system.

The ITA system works against families and has become an excuse to deny care to people who need it. Watching a loved one deteriorate is difficult to witness. Not being able to access care is criminal and demoralizing. Many people die when their civil rights are protected, and they die of a treatable illness. Treatment laws require violence and imminent threat.

Changing the definition of gravely disabled will help more people get treatment.

Changing the 72-hour evaluation timeframe to 120 hours allows people in crisis to stabilize before discharge and gives family members and social workers enough time to do assessments and connect people to community-based treatment. Sometimes it takes several days for an individual to detox from a substance. Medical professionals are not able to spend enough time with patients to make a good diagnosis, form a good treatment plan, and be comfortable not pursuing an involuntary route. Increasing the timeframe will help the long-term chances for patient success and save state resources and bed capacity.

It is not clear whether the change will lead to more civil commitment or less. The ITA court system consists of numerous staff, full-time court dockets, and is overwhelmed. Hearings routinely get continued for between seven to 11 days to allow detained individuals to stabilize.

Good legal decisions cannot be made when a prosecutor and a defense attorney only have access to a file for 24 hours. The additional time will give us time to analyze the case appropriately and proceed on cases that are appropriate. The difference between a criminal hearing and an ITA hearing is that a person in an ITA hearing is not necessarily competent enough to speak to their attorney.

(Opposed) This is the most troublesome ITA legislation in years. Liberty is an inherent value. Making it easier to force someone into psychiatric or substance use care only serves the people around the person in crisis. This bill would undercut the due process rights of people detained under the ITA and violates a person's dignity, self-respect, and self-worth. These rights must be afforded at the beginning of the loss of freedom, not after.

The behavioral health system is already overwhelmed. There is a shortage of beds, and this legislation would place more burden on these costly resources. The bill will lengthen stays in facilities and would further expand the private psychiatric industry in the state. The facilities are noisy, chaotic, and provide little treatment.

The Seattle Veterans' Administration (VA) does not admit any veteran who has been detained under state law. Legislators should require emergency rooms and other facilities to transfer veterans to the VA system so that the state system could be relieved of them while doing the military veteran justice.

The bill allows limitless continuances without the consent of the patient and with the possibility that the patient could be detained during the continuance.

A criminal defendant is afforded more rights than a person with a behavioral health disorder. A defendant has a first court appearance within 48 hours of arrest. A sexually violent predator who is civilly committed will have a probable cause determination within 72 hours.

There are only 13 states that have a period of detention that is in excess of 72 hours.

The new definition of gravely disabled is vague. Case law already explains what the standard is, and there will be litigation to determine what safe behavior means.

Involuntarily medicating a person is currently performed only in controlled settings. It should not be performed in the community. Many people stop taking medication because of the side effects of sedation and lack of cognition.

(Other) The approach of administration of involuntary medications on an outpatient basis runs contrary to the values of recovery, choice, and engagement. It is not practical or feasible to safely provide it in an outpatient setting. Providers do not have the right staffing or setting to compel medication.

The change to the definition of gravely disabled as applied to individuals who come to the emergency room with a substance use disorder will increase the number of detentions of people with substance use disorders. Hospitals do not provide substance use disorder treatment, and there is no bed capacity. The definition implies that a person can be restored to safe behavior without access to substance use disorder treatment.

Persons Testifying: (In support) Senator Dhingra, prime sponsor; Brad Forbes, National Alliance on Mental Illness Washington; Marilyn Roberts; Patricia Egbert; Jerri Clark, Mothers of the Mentally Ill; Anne Mizuta, King County Prosecutor's Office; Claudia Green; Preston Horne-Brine; Russell Brown, Washington Association of Prosecuting Attorneys; and Don Bremner.

(Opposed) Rebecca Faust; Zelda Menard; Mike De Felice and Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers; David Montes, King County Department of Public Defense; Mike Wimberley; Steven Pearce, Citizens Commission on Human Rights; Laura Van Tosh; and Jennifer Bliss.

(Other) Len McComb, Washington State Hospital Association; and Richard Stride, Cascade Community Healthcare.

Persons Signed In To Testify But Not Testifying: None.