

FINAL BILL REPORT

2E2SSB 5720

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Synopsis as Enacted

Brief Description: Concerning the involuntary treatment act.

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

Senate Committee on Health & Long Term Care
Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care
Senate Committee on Ways & Means
House Committee on Civil Rights & Judiciary
House Committee on Appropriations

Background: Involuntary Treatment Act Procedures. A commitment under the Involuntary Treatment Act (ITA) begins with a designated crisis responder (DCR) investigation. 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. The DCR must determine whether the person has a mental disorder or substance use disorder which causes the person to present a likelihood of serious harm or to be gravely disabled. If the DCR so finds, the DCR must determine whether the person is willing to accept voluntary treatment and whether the person's needs can be served in a less restrictive alternative (LRA) to inpatient detention. If these conditions are not met, the DCR may detain the person for up to 72 hours to an evaluation and treatment facility (E&T) or secure detoxification facility (secure detox), excluding weekends and holidays.

For detention to continue past the end of the 72-hour period, a probable cause hearing must be held in superior court. By making appropriate findings, the court may authorize up to 14 additional days of involuntary treatment. The person must have access to appointed counsel and be afforded a panoply of due process rights. For detention to continue past the 14-day period, the person must be provided notice of a new petition at a trial setting hearing and be afforded the right to a jury trial. The subsequent detention period, if authorized, is 90 days for adults or 180 days for minors. At any time in which the person's need may be met in an LRA, the person must be released from detention, but may be ordered to comply with conditions.

Involuntary Treatment Act Definitions. "Likelihood of serious harm" is a ground for involuntary commitment which means a substantial risk that:

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- physical harm will be inflicted by a person upon themselves, as evidenced by threats or attempts to commit suicide or inflict physical harm on themselves;
- physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person 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; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

"Gravely disabled" is a ground for involuntary commitment which means that the person:

- is in danger of serious physical harm resulting from a failure to provide for their essential human needs of health or safety; or
- manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health and safety.

Single Bed Certifications. A single-bed certification is a temporary certification to provide involuntary treatment services in a facility or section of a facility which is not normally certified to provide involuntary services. To receive a single-bed certification, a facility must attest that they are willing and able to provide timely and appropriate mental health treatment, either directly or by arrangement with other public or private agencies. Single-bed certifications may be sought for a variety of purposes, including providing for medical needs that cannot be met in a certified facility, facilitating continuity of care, providing involuntary care in a normally voluntary psychiatric setting, and based on a lack of availability of certified involuntary treatment beds. 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.

Nonfelony Flip Patients. A person who is released from jail following dismissal of nonfelony charges based on incompetency to stand trial may be referred for an involuntary commitment evaluation within 48 hours, or directly detained to an E&T, depending on the seriousness of the offense. If the person is not subsequently detained, the DCR or facility must present the decision to not detain to the superior court, which must hold a review hearing. In some permutations of this complex statute, a surety hearing must be ordered in circumstances where the court has overridden the decision of the treatment facility or DCR.

Involuntary Medication. A facility may provide involuntary medication during a period of detention for involuntary treatment only in a lifesaving emergency situation or by following certain procedures. For short-term hospitalizations under 30 days, the facility must have attempted and failed to obtain the informed consent of the person and there must be a concurring medical opinion by a professional with prescribing authority. For patients in long-term detention, a petition must be filed to obtain a court order alleging a lack of medically acceptable alternatives that are likely to be successful.

Provisions in Adult Involuntary Treatment Act That Do Not Correspond to Provisions in Involuntary Treatment Act for Minors. The ITA for adults contains a number of provisions

which do not appear in the ITA for minors, which is embodied in a separate chapter of the Revised Code of Washington. These provisions include:

- Joel's Law, which provides specific procedures allowing a family member, guardian, or conservator of a person to appeal the decision of a DCR to not detain an individual for review in superior court;
- intent provisions emphasizing strong consideration of a prior behavioral health history during commitment decisions and a substantive provision that requires DCRs to consider information from all credible witnesses and to construe current symptoms and behavior in conjunction with historical behavior when analyzing grave disability;
- intent provisions instructing the courts to focus on the merits of involuntary commitment petitions except when procedural requirements have been totally disregarded, referencing the *parens patrie* and police powers of the state, and substantive provisions stating that dismissal is not the appropriate remedy for violations of certain timeliness requirements except where those requirements have been totally disregarded;
- mandatory components of LRA treatment which must be provided by community behavioral health agencies to persons who are court-ordered to receive LRA treatment;
- authorization for a peace officer to take a person into custody and deliver them to an appropriate triage facility, crisis stabilization unit, E&T, secure detox, approved substance use disorder treatment program, or emergency department based on reasonable cause to believe the person is detainable under the ITA;
- authorization for a peace officer to detain a person who has been arrested for up to eight hours at an E&T, secure detox, or approved substance use disorder treatment program for consideration of admission to a treatment program instead of further criminal justice proceedings;
- the right to an inventory of possessions upon entry into involuntary detention, which must be provided to the detained person so that possessions may be safeguarded;
- a 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; and
- authorization for a facility to allow a person who is detained for treatment to leave the facility for temporary periods under appropriate conditions.

Summary: The period of initial detention under the ITA is increased from 72 hours to 120 hours, excluding weekends and holidays, beginning January 1, 2021.

If and when the Health Care Authority (HCA) provides written notice to the Office of the Code Reviser, Senate, and House of Representatives that monthly reported single-bed certifications have fallen below 200 reports for three consecutive months, the definitions of likelihood of serious harm and gravely disabled that apply to adults are expanded to include a risk of physical harm evidenced by harm, substantial pain, or which places a person in reasonable fear of harm to themselves or others and modified to change "manifests severe deterioration in routine functioning" to "manifests severe deterioration from safe behavior." Severe deterioration from safe behavior would be defined to mean that the person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress associated with significant impairment of judgment, reason, or behavior.

If and when HCA provides written notice to the Office of the Code Reviser, Senate, and House of Representatives that the average wait time for children's long-term inpatient placement admission is 30 days or less for two consecutive quarters, the definitions of likelihood of serious harm and gravely disabled that apply to adolescents are expanded to include a risk of physical harm evidenced by harm, substantial pain, or which places a person in reasonable fear of harm to themselves or others, and modified to change "manifests severe deterioration in routine functioning" to "manifests severe deterioration from safe behavior." Severe deterioration from safe behavior would be defined to mean that the person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress associated with significant impairment of judgment, reason, or behavior.

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. The DCR evaluation may occur by video, if a licensed health professional or professional person is present with the person.

A DCR must notify law enforcement of a person's six-month suspension of firearm rights under the ITA in the county or municipality where the person is domiciled.

Before returning a firearm at the end of a six-month suspension of firearm rights under the ITA, law enforcement must verify that the person was not subsequently committed.

A court must issue an order of dismissal in situations where a person subject to a petition is not detained or committed for involuntary behavioral health treatment.

A court may authorize involuntary medication as part of an LRA order if the person was provided with involuntary medication during the involuntary commitment period. The LRA provider must have attempted and failed to obtain informed consent of the person and there must be a concurring medical opinion by a psychiatrist, physician, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician assistant working with an independent mental health professional with prescribing authority.

A court order for a peace officer to detain a person for involuntary treatment must be entered into the Washington Crime Information Center database as a written order of apprehension.

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

The definition of violent act used in analyzing a person's history of one or more violent acts is expanded to include behavior that results in injury, or substantial loss or damage to property.

The three-hour examination required when a person is held for investigation for detention under the ITA must be performed by a mental health professional or a chemical dependency professional.

When a person is detained for treatment in a different county from where the person was initially detained, the facility may file the petition and proof of service on the person and their attorney instead of the DCR at the request of the evaluating DCR.

A pair of surety hearing processes are eliminated when superior court reviews the failure of a facility to detain a person who has been released from jail after the dismissal of serious nonfelony charges based on incompetency to stand trial.

Time limitations on continuances in ITA hearings are repealed. Involuntary commitment hearings may be continued for good cause or as required in the proper administration of justice, if the respondent consents or will not be substantially prejudiced. The hearing may be continued for good cause without respondent consent if the respondent was committed following dismissal of felony charges based on incompetency to stand trial.

A facility may show that a person is not volunteering in good faith to accept treatment by demonstrating that the person has failed to abide by the procedures or a treatment plan prescribed by the facility and its professional staff.

A person transported to a state hospital for commitment after dismissal of felony charges based on incompetency to stand trial may be subject to a petition for 90-days of involuntary treatment on grounds of likelihood of serious harm or grave disability, in addition to 180-day treatment under current legal provisions.

A requirement is repealed for a committed person to appear in person before the court to receive notice of a trial setting for a 90-day or 180-day involuntary treatment petition.

A court, in addition to a party, may request a modification to an LRA order. The LRA revocation period is clarified to consist of 14 days if it follows a probable cause hearing or period of assisted outpatient behavioral health treatment and otherwise the number of days left until expiration of the LRA order.

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

The time frame to file a 180-day petition for additional treatment of a minor is shortened to three days, instead of five days, before the end of the current commitment period.

Various provisions from adult ITA are imported into minor ITA and applied to persons under eighteen years of age:

- Joel's Law, which provides specific procedures allowing a family member, guardian, or conservator of a person to appeal the decision of a DCR to not detain an individual for review in superior court;
- intent provisions emphasizing strong consideration of a prior behavioral health history, the impact on the family, and safety of children in the household during commitment decisions and a substantive provision that requires DCRs to consider information from all credible witnesses, including teachers or school personnel, and to construe current symptoms and behavior in conjunction with historical behavior when analyzing grave disability;

- intent provisions instructing the courts to focus on the merits of involuntary commitment petitions except when procedural requirements have been totally disregarded, referencing the *parens patrie* and police powers of the state, and substantive provisions stating that dismissal is not the appropriate remedy for violations of certain timeliness requirements except where those requirements have been totally disregarded;
- mandatory components of LRA treatment which must be provided by community behavioral health agencies to persons who are court-ordered to receive LRA treatment;
- authorization for a peace officer to take a person into custody and deliver them to an appropriate triage facility, crisis stabilization unit, E&T, secure detox, approved substance use disorder treatment program, or emergency department based on reasonable cause to believe the person is detainable under the ITA;
- authorization for a peace officer to detain a person who has been arrested for up to eight hours at an E&T, secure detox, or approved substance use disorder treatment program for consideration of admission to a treatment program instead of further criminal justice proceedings;
- the right to an inventory of possessions upon entry into involuntary detention, which must be provided to the detained person so that possessions may be safeguarded;
- a 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; and
- authorization for a facility to allow a person who is detained for treatment to leave the facility for temporary periods under appropriate conditions.

Provisions delineating the rights of detained persons are harmonized between the adult and minor ITA chapters. The right to treatment by spiritual means is clarified to be in addition to treatment otherwise proposed. Language is stricken providing the Rules of Evidence do not apply during a minor's probable cause hearing. The venue for the detention or revocation hearing of a minor must be in the county where treatment is being provided. Technical corrections are made.

An Involuntary Treatment Work Group is established with up to 18 members to be appointed by the Governor, including but not limited to:

- representatives of DSHS, the Health Care Authority (HCA), and the Department of Health;
- certified short-term and long-term ITA providers, including providers who accept single-bed certification;
- at least two behavioral health peers;
- the Office of the Attorney General;
- prosecuting and defense attorneys;
- family members and persons with lived experience of behavioral health disorders;
- advocates for persons with behavioral health disorders;
- DCRs;
- managed care organizations and behavioral health administrative services organizations;
- law enforcement; and
- judicial officials.

The Work Group must evaluate the implementation of this act, including implementation of the expansion of the initial detention to 120 hours, and other vulnerabilities in the involuntary treatment system. The Work Group must choose cochairs from among its members, be staffed by HCA, and meet at least three times. The Governor must request participation by a representative of tribal governments. Interested legislators and legislative staff may participate. The Work Group must provide two reports containing recommendations to relevant committees of the Legislature, by January 1, 2021, and by June 30, 2022.

Votes on Final Passage:

2019 Regular Session

Senate 46 2

2020 Regular Session

Senate 44 3

House 95 2 (House amended)

Senate 48 1 (Senate concurred)

Effective: June 11, 2020

January 1, 2021 (Sections 13, 16, 19 through 23, 26, 32, 34, 36, 39, 55, 59, 76, 83, 86, 89, and 92)

July 1, 2026 (Sections 14, 17, 27, 40, 46, 56, 79, 84, 87, 93, 95, and 98)
contingent (Sections 4, 28, 64, and 81)