

SENATE BILL REPORT

SB 5073

As of January 14, 2021

Title: An act relating to improving involuntary commitment laws.

Brief Description: Concerning involuntary commitment.

Sponsors: Senators Dhingra, Das, Kuderer, Salomon, Warnick and Wilson, C..

Brief History:

Committee Activity: Health & Long Term Care: 1/13/21 [w/oRec-BH].

Behavioral Health Subcommittee to Health & Long Term Care: 1/15/21.

Brief Summary of Bill

- Expands the authority of a designated crisis responder (DCR) to conduct a civil commitment investigation by video to include investigations involving an adolescent.
- Expands requirements for court-ordered involuntary outpatient behavioral health treatment and applies them to both civil and forensic patients.
- Requires DCRs to attempt to ascertain whether a person being investigated for civil commitment has executed a mental health advance directive.
- Allows courts to monitor patients ordered to receive involuntary outpatient treatment and to modify the terms of their commitment orders.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Staff: Kevin Black (786-7747)

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

Background: Involuntary Commitment for Behavioral Health Treatment. Involuntary commitment occurs when a court orders a person to undergo a period of involuntary behavioral health treatment. Involuntary treatment may occur in an inpatient setting, or it may consist of a period of outpatient treatment, which is known as less restrictive alternative (LRA) treatment. Washington law refers to orders requiring LRA treatment as LRA treatment orders, conditional release orders, or assisted outpatient behavioral health treatment orders. The term conditional release order may apply to a person committed under civil treatment statutes applicable to persons found to present a likelihood of serious harm or to be gravely disabled due to a behavioral health disorder, or to persons committed under forensic treatment statues following acquittal of criminal charges based on a finding of not guilty by reason of insanity.

Minimum Components of Less Restrictive Alternative Treatment. In 2016, the Legislature established mandatory minimum components for a course of LRA treatment under civil treatment statutes. These include:

- assignment of a care coordinator;
- a psychiatric evaluation;
- a schedule of regular contacts with the treatment provider;
- a transition plan;
- an individual crisis plan; and
- notification to the care coordinator when the client does not substantially comply with treatment requirements.

Other optional LRA treatment requirements were specified. Subsequent to this enactment, involuntary commitment laws were expanded to encompass commitments based on an underlying substance use disorder in addition to commitments based on an underlying mental health disorder.

Civil Commitment Evaluations by Video. Involuntary commitment under civil treatment statutes must be initiated by a designated crisis responder (DCR) following an investigation. In 2020, laws were amended to allow DCRs to investigate adults for involuntary commitment using a video interview, provided that a health professional is present with the adult during the interview. The same authority was not extended to civil commitment investigations of adolescents.

Mental Health Advance Directives. A mental health advance directive is a legal document declaring a person's preferences in the event that the person becomes incapacitated due to a mental health disorder. In this circumstance the mental health advance directive may appoint another person to make decisions on their behalf. Washington State's mental health advance directive law was enacted in 2003.

Types of Civil Involuntary Commitment Facilities. Washington law establishes two types of licensed involuntary treatment facilities for civil patients: evaluation and treatment facilities (E&Ts) which specialize in treating patients with mental health disorders, and

secure withdrawal management and stabilization facilities (SWMS), which specialize in treating patients with substance use disorders. A facility may be licensed as a co-occurring disorder treatment facility specializing in treatment of all kinds of behavioral health disorders. If following a person's judicial commitment to an E&T or SWMS it appears that the person would be better served by treatment at the other kind of facility, the facility may refer the patient for placement at the more appropriate facility.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A DCR may conduct an involuntary commitment interview for an adolescent by video, provided that a health professional who can adequately assist the adolescent is present at the time of the interview. This provision is subject to an emergency clause and effective immediately.

Minimum requirements for a program of LRA treatment are expanded to apply all kinds of court-ordered involuntary outpatient behavioral health treatment orders, including conditional release orders for persons committed under forensic treatment statutes. These requirements are modified by allowing a substance abuse evaluation to be provided instead of, or in addition to, a mental health evaluation and by requiring consultation about the formation of a mental health advance directive. A care coordinator may share information related to court-ordered involuntary outpatient behavioral health treatment to implement involuntary commitment proceedings.

A DCR must attempt to ascertain whether a person under investigation for civil commitment has executed a mental health advance directive. A transfer of a patient detained for involuntary treatment between an E&T or SWMS facility may take place at any time following the patient's initial examination and evaluation.

A court may conduct periodic review of the progress of a person on an LRA or conditional release order, modify the terms of the order, and take certain actions. The length of the conditional release period is clarified.

Appropriation: None.

Fiscal Note: Requested on January 13, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates, including sections subject to an emergency clause that are effective immediately.