

# HOUSE BILL REPORT

## E2SSB 5745

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**As Passed House:**

April 11, 2025

**Title:** An act relating to legal representation under the involuntary treatment act.

**Brief Description:** Concerning legal representation under the involuntary treatment act.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Bateman, Lovick, Nobles and Pedersen).

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 3/25/25, 3/28/25 [DP];

Appropriations: 4/5/25, 4/7/25 [DP].

**Floor Activity:**

Passed House: 4/11/25, 59-37.

**Brief Summary of Engrossed Second Substitute Bill**

- Addresses requirements and procedures for appointment of defense counsel under the Involuntary Treatment Act (ITA).
- Allows the Office of Public Defense to provide appointed counsel under the ITA at the request of the Health Care Authority upon request of a county for individuals detained at a state facility.
- Defines "state facilities" and specifies that the Attorney General is responsible for representing state facilities in ITA proceedings.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** Do pass. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Abell, Assistant Ranking Minority Member; Jacobsen.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Burnett and Graham.

**Staff:** Edie Adams (786-7180).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 19 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Bergquist, Callan, Cortes, Doglio, Fitzgibbon, Leavitt, Lekanoff, Peterson, Pollet, Ryu, Springer, Stonier, Street, Thai and Tharinger.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Penner, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Burnett, Caldier, Corry, Dye, Keaton, Manjarrez, Marshall and Rude.

**Staff:** Andy Toulon (786-7178).

### **Background:**

#### Involuntary Treatment Act.

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for involuntary treatment of behavioral health disorders. Under the ITA, a person may be committed by a court for involuntary treatment if the person, due to a behavioral health disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient treatment, and the person will not consent to voluntary treatment.

Designated crisis responders (DCRs) are 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 or petition a court to order detention for the person for up to 120 hours, excluding weekends and holidays, to an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. After the initial 120-hour detention, the facility providing treatment may petition the court to have the person committed for further behavioral health treatment for 14 days. 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 subject to civil commitment under the ITA is entitled to certain rights and due process protections, including the right to a hearing and the right to appointed counsel.

Superior courts have jurisdiction over ITA proceedings. The prosecuting attorney for the county in which the proceeding is initiated must represent the individuals or agencies petitioning for commitment or detention, except that the Attorney General represents and provides legal services to state hospitals and institutions for ITA proceedings, other than proceedings initiated by a state hospital or institution seeking a 14-day detention.

A county may seek reimbursement from its behavioral health administrative services organization (BHASO) on a quarterly basis for its direct costs in providing assigned counsel and other judicial services for civil commitment cases. Judicial services means a county's reasonable direct costs in providing prosecutor services, assigned counsel and defense services, court services, and court clerk services for civil commitment cases. The BHASO is in turn entitled to seek reimbursement from the BHASO that serves the county of residence of the individual who is the subject of the civil commitment case.

#### Office of Public Defense.

The Office of Public Defense (OPD) is a judicial branch agency established to implement the constitutional and statutory guarantees of counsel and to deliver indigent defense services funded by the state. The OPD is prohibited from providing direct representation of clients except in certain circumstances, and instead administers state-funded services. The OPD contracts with attorneys, local governments, and law firms to provide representation of indigent client appeals, indigent parents in dependency cases, persons committed as sexually violent predators or following a finding of not guilty by reason of insanity, and initial consultations for youth who are stopped or arrested by law enforcement.

#### **Summary of Bill:**

The county where a person is detained is responsible for administering appointed counsel under the ITA, regardless of the person's county of origin. The county may provide counsel directly or by contracting for counsel services, or the county may request the Health Care Authority (HCA) to contract for counsel with the OPD on behalf of the county if the person is detained at a state facility. The HCA must notify the county within 30 days of receipt of notice from the OPD that appointed counsel cannot be provided by the OPD, in which case the county must provide appointed counsel either directly or by contracting for that representation. "State facility" means the Center for Behavioral Health and Learning located on the University of Washington Medical Center Northwest campus and facilities owned or operated by the Department of Social and Health Services that are not state hospitals and that provide inpatient services for people under the ITA.

When the HCA contracts with the OPD to provide public defense services at the request of a county, the BHASO is not required to reimburse the county in which the proceedings are being conducted for the direct costs of public defense services. The HCA must reduce the funding provided to the county's BHASO equivalent to the HCA's expense in contracting with the OPD for public defense services. The county's BHASO may still seek reimbursement from the BHASO that serves the county of residence of the individual who

is the subject of the civil commitment case.

The OPD is given authority to administer legal representation of indigent persons qualified for appointed counsel in ITA cases at the request of the HCA on behalf of a county. The OPD may provide legal services either directly or by contracting with persons admitted to practice law in this state or organizations that employ persons admitted to practice law in this state.

The Attorney General's obligation to represent and provide legal services for ITA proceedings other than 14-day commitments is revised to apply with respect to state facilities, rather than state institutions.

The definition of "state hospital" is aligned across statutory provisions to mean Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately. Sections 2 and 7 have contingent effective dates. Please see the bill.

**Staff Summary of Public Testimony (Civil Rights & Judiciary):**

(In support) The state partnered with UW Medicine in 2019 to build the behavioral health teaching hospital to replace civil commitment beds being closed at Western State Hospital and to train the future behavioral health workforce. Admissions to the facility were halted when it was learned that King County Public Defense would not be providing legal representation for the patients. Without representation, patients are at risk of being released at the end of an initial detention even when their clinical needs are still present.

The bill addresses the challenges faced by county public defender agencies when long-term ITA patients are transferred to a county because it houses a state psychiatric facility. These patients often have no prior connection to the county and their cases are prosecuted by the Attorney General and not the local prosecutor. The OPD has a proven track record of providing high quality and effective attorneys in civil commitment proceedings and can replicate this model to ensure effective assistance of counsel on long-term ITA cases.

The bill only addresses the new state facilities providing inpatient treatment. It does not change current law but emphasizes that the counties are responsible for defense costs. When individuals move out of state hospitals into state facilities, the counties may either provide defense services directly, contract for private defense, or inform the HCA that the county would like the OPD to provide defense services. While the bill only addresses the new state facilities, ongoing work is needed on the issue of reimbursement for judicial costs

for the entire ITA system.

The Legislature has invested hundreds of millions of dollars in community behavioral health facilities to address the behavioral health crisis. Under the bill, the system will have flexibility to ensure that public defense is available to long-term ITA patients. This means not having to scramble to patch together piecemeal solutions, so that all ITA patients will have defense counsel to protect patients' rights in ITA proceedings.

(Opposed) Persons facing involuntary treatment are facing a major loss of civil liberties and freedoms. These people need a really good lawyer who is committed to providing a vigorous defense and faithfully representing the views and position of the detained individual. This is important because the allegations made to justify involuntary commitment may not be entirely true and the individual may have a different version of the facts and history of the events.

(Other) Counties appreciate the options in the bill but still have concerns. These are state patients prosecuted by the Attorney General for commitment to state facilities, yet counties are being required to provide defense counsel. Although the OPD may handle these cases upon request, responsibility ultimately falls to the county. The bill will not cover full defense costs because a county is only entitled to reimbursement of direct costs, while the OPD would be reimbursed for full costs. The bill also does not adjust BHASO rates to accommodate for the OPD's increased costs. A more streamlined approach would be for the OPD to provide these services directly and for the state to fund them directly. There should be consistent legal counsel regardless of whether the person crosses a county line.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) The state partnered with UW Medicine in 2019 to build the behavioral health teaching hospital to fulfill two needs: replacement of civil commitment beds being closed at Western State Hospital, and a place to train the next generation of the behavioral health workforce. Patients started being admitted from around the state after the ribbon cutting last May, but in early fall, the hospital was made aware that the King County Department of Public Defense may not be providing legal representation for some of the patients. A difficult decision was made to stop admissions because, without representation, patients would be at risk of being released at the end of their initial detention regardless of their clinical needs. This bill clarifies the process for the UW facility and for other facilities that provide this care.

This bill authorizes the HCA to contract with the OPD to provide ITA counsel in limited circumstances when the local county isn't able to provide attorneys. The OPD already provides specialized defense counsel in other types of civil commitment cases and was asked to step in on an emergency basis to help out with the cases at the UW behavioral health teaching hospital. This has been a pilot project for a few weeks. The bill allows this process to continue in other circumstances, including when the county isn't able to provide

counsel. Without counsel for a patient, the state cannot proceed with the involuntary treatment process.

(Opposed) Individuals who are facing any involuntary commitment, or any sort of involuntary treatment or forced institutionalization, need not just any lawyer, but a really good lawyer who will fight to defend their constitutional rights. A focus on simply accelerating the process of involuntary treatment is wrong.

(Other) The Legislature needs to act this session to determine who is responsible for representing long-term involuntarily committed patients. This bill places the responsibility on counties without adequate funding. These are state patients being committed under the state's long-term involuntary treatment system; however, the bill requires counties to defend their civil rights. The bill does not cover full defense costs because a county is only entitled to reimbursement of direct costs. In other words, the state will reimburse the cost of the attorney representing the patient, but that does not include the clerk support staff. These cases cannot proceed with only the lawyer defending the client.

**Persons Testifying (Civil Rights & Judiciary):** (In support) Senator Manka Dhingra, prime sponsor; Kelly Canary, Washington State Office of Public Defense; Nathan Olson, Office of the Governor; and Rashi Gupta, UW Medicine.

(Opposed) Michael Brunson.

(Other) Joe McDermott, State Relations Director, King County.

**Persons Testifying (Appropriations):** (In support) Rashi Gupta, UW Medicine; and Sophia Byrd McSherry, Washington State Office of Public Defense.

(Opposed) Michael Brunson.

(Other) Joe McDermott, State Relations Director, King County.

**Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.