

SENATE BILL REPORT

SB 5745

As of February 17, 2025

Title: An act relating to appointed counsel for individuals detained under the involuntary treatment act.

Brief Description: Concerning appointed counsel for individuals detained under the involuntary treatment act.

Sponsors: Senators Dhingra, Bateman, Lovick, Nobles and Pedersen.

Brief History:

Committee Activity: Law & Justice: 2/17/25.

Brief Summary of Bill

- Clarifies and makes changes to the process for appointed counsel under the Involuntary Treatment Act (ITA).
- Allows the Office of Public Defense (OPD) to provide appointed counsel under the ITA.
- Clarifies the attorney general's role in representing petitioners in ITA proceedings.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Involuntary Treatment. Under the Involuntary Treatment Act (ITA), a person may be committed by a court for involuntary treatment if the person, due to a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled and will not consent to voluntary treatment.

Appointed Counsel. A person subject to commitment is afforded numerous rights and due

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process protections, including, but not limited to, the right to have an attorney appointed. The cost of appointed counsel is typically borne by local jurisdictions. Local jurisdictions rely on a variety of service models to provide public defense services, including county defense agencies, in which public defenders are employed by local government, and contract systems in which the local government contracts with a non-profit agency, private law firm, or individual attorneys to perform appointed counsel services.

Proceedings. Designated crisis responders (DCRs) are responsible for investigating and determining whether a person may be in need of involuntary treatment. A DCR may be a mental health professional appointed by a managed care organization, or by the Health Care Authority (HCA) in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider.

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.

Jurisdiction over involuntary mental health treatment proceedings is with the superior court. County prosecutors represent petitioners, unless the petitioner is a state hospital or institution, in which case the attorney general (AGO) provides representation.

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. OPD is prohibited from providing direct representation of clients, except in certain limited circumstances, and instead administers state funded services. OPD contracts with attorneys, local governments, and law firms to provide representation of indigent client appeals, indigent parents in dependency cases, individuals committed as sexually violent predators, individuals committed by reason of insanity, and initial consultations for youth who are stopped or arrested by law enforcement.

Behavioral Health Administrative Services Organizations. A Behavioral Health Administrative Services Organization (BH-ASO) is an entity contracted with the HCA to administer behavioral health services using state funds within a regional service area. BH-ASOs oversee regional crisis lines and designated crisis responders. BH-ASOs also reimburse counties for the direct costs of appointed counsel in civil commitment proceedings.

State Hospitals. The definition of state hospital varies in statute. Some definitions only include Western State Hospital (WSH) and Eastern State Hospital (ESH) which are adult psychiatric hospitals that provide involuntary inpatient treatment for persons with mental disorders who are committed by civil and criminal courts. Other definitions include the

Child Study and Treatment Center which is a youth psychiatric hospital that provides involuntary inpatient treatment for children and youth with mental disorders. The hospitals are operated by the Department of Social and Health Services (DSHS).

Summary of Bill: Involuntary Treatment. Appointed Counsel. The county where a person is detained must administer appointed counsel services under the ITA, either directly or by contracting for that representation. A county may elect to have the HCA contract with the OPD for appointed counsel services on the county's behalf. If a county elects to have the HCA contract with OPD, then the county's BH-ASO funding shall be reduced equivalently.

The OPD is required to represent indigent clients in ITA cases, either directly or by contracting, at the request of the HCA on behalf of a county.

Proceedings. The AGO's requirement to represent petitioners in ITA proceedings, except for 14-day petitions, is limited to petitions initiated at state hospitals, the Center for Behavioral Health and Learning located on the University of Washington northwest medical campus, and facilities owned by DSHS that operate in Thurston and Clark counties.

State Hospitals. The definition of "state hospital" is standardized to mean WSH, ESH, and the Child Study & Treatment Center.

Appropriation: None.

Fiscal Note: Requested on February 13, 2025.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.