Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Judiciary Committee

E2SSB 5649

Title: An act relating to involuntary outpatient mental health treatment.

Brief Description: Concerning the involuntary treatment act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Darneille, Miloscia, Fraser, Keiser, Parlette, Benton, McCoy and Dammeier).

Brief Summary of Engrossed Second Substitute Bill

- Requires regional support networks to administer an adequate network of evaluation and treatment services to ensure access to treatment, and creates reporting and response procedures for instances in which a person is deemed to meet initial detention criteria but no evaluation and treatment bed is available.
- Allows the Department of Social and Health Services to use a single bed certification to place a detained person in a facility other than an evaluation and treatment facility in some circumstances when an evaluation and treatment bed is not available.
- Exempts time prior to medical clearance from the timelines for examinations and initial detention decisions in the Involuntary Treatment Act, and states a presumption that involuntary treatment cases will be decided on their merits rather than dismissed for timeline violations.
- Provides that a person meeting the definition of "in need of assisted outpatient mental health treatment" may be committed by a court for involuntary mental health treatment on a less restrictive alternative to an inpatient order.

Hearing Date: 3/24/15

Staff: Omeara Harrington (786-7136).

Background:

Involuntary Mental Health Commitment Procedures.

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.

A person may be committed by a court for involuntary mental health treatment under the Involuntary Treatment Act (ITA) if he or she, due to a mental disorder, poses a likelihood of serious harm or is gravely disabled. "Likelihood of serious harm" means that a person poses a substantial risk of physical harm to self, others, or the property of others, as evidenced by certain behavior, or that a 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.

The commitment cycle begins with an initial evaluation period of up to 72 hours at an evaluation and treatment facility (E&T) initiated by a designated mental health professional (DMHP). An E&T is defined as any facility that can provide directly or by arrangement with other agencies emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and that is certified as such by the Department of Social and Health Services (DSHS). The DSHS contracts with regional support networks (RSNs) to provide E&T services.

Within the initial 72-hour evaluation period, the professional staff of the E&T facility may petition the court to have the person committed for further mental health treatment. Following a hearing, the court may order the person to be involuntarily committed for up to 14 days of additional treatment. 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.

Single Bed Certification.
Under a "single bed certification" the DSHS is authorized by rule to certify a single bed for an ITA detention outside of an E&T in certain circumstances. The Washington Supreme Court recently decided *In re D.W.*, 181 Wn.2d 201 (2014), in which the court determined that the ITA and administrative rules do not allow DSHS to approve a single bed certification to avoid overcrowding at certified E&T facilities. A single bed certification is only authorized if the person requires a service that is not available at an E&T, such as a medical service, or if being at a community facility would facilitate continuity of the person's care.

The DSHS has enacted emergency rule changes allowing the DSHS to grant a single bed certification to a facility that is willing and able to provide timely and appropriate treatment, either directly or by arrangement with other agencies. Examples of facilities that may be approved for single bed certifications include residential treatment facilities, psychiatric hospitals, hospitals with a psychiatric unit, and hospitals that can provide psychiatric services.

Timelines for Initial Detention Assessments and Decisions.
When a person is held for initial evaluation in an emergency room, triage facility, or crisis stabilization unit, the DMHP must detain the person to an E&T or release the person within six hours of the time that facility staff determines a DMHP evaluation is necessary. When a person is delivered to a facility by law enforcement, a mental health professional must examine the person within three hours of arrival at the facility, and a DMHP must determine within 12 hours of the person's arrival whether the person meets the criteria for a 72-hour initial detention. Each

person involuntarily detained and accepted or admitted at an E&T must be examined and evaluated by a combination of two medical professionals within 24 hours including licensed physicians, mental health professionals and advanced registered nurse practitioners.

A 2002 Washington State Supreme Court Case, *In re C.W.* (147 Wn.2d 259), analyzed violations of the six-hour timeline. The court expressed that the law favors deciding involuntary commitment cases on their merits rather than dismissing them for procedural irregularities, and held that a time violation does not necessarily require dismissal of the commitment proceeding. Dismissal would be appropriate if the requirements of the statute were totally disregarded by hospital staff or by the DMHP.

<u>Less Restrictive Alternative Treatment</u>.
When entering an order for up to 14, 90, or 180 days of treatment, if the court finds that the person poses a likelihood of serious harm or is gravely disabled, but that treatment in a less restrictive alternative (LRA) than detention in the best interest of the person or others, the court must order an appropriate less restrictive course of treatment rather than inpatient treatment. An LRA order may be modified or revoked if the person is failing to adhere to the terms and conditions of his or her release, is substantially deteriorating or decompensating, or poses a likelihood of serious harm.

At the 180-day order stage, additional grounds exist under which a person may be committed for continued LRA treatment without a showing of likelihood or serious harm or grave disability. The additional grounds for a petition for continued treatment under the LRA are that:

- the person has been involuntarily committed to detention for mental health treatment during the 36 months preceding the initial detention in the current commitment cycle, excluding any time spent in a mental health facility or in confinement as a result of a criminal conviction;
- the person is unlikely to voluntarily participate in outpatient treatment without an order for LRA treatment, in view of the person's treatment history or current behavior; and
- outpatient treatment that would be provided under an LRA order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time.

Successive 180-day inpatient or LRA commitment orders are permissible on the same grounds and pursuant to the same procedures as the original 180-day commitment. However, commitment is not permissible on the alternative grounds to likelihood of serious harm or grave disability if 36 months have passed since the date of discharge from inpatient treatment that preceded the current LRA order.

Summary of Bill:

<u>Evaluation and Treatment Facility Capacity and Single Bed Certifications</u>.

Regional support networks must provide for an adequate network of E&T services to ensure access to treatment for persons who meet ITA detention criteria. The DSHS must collaborate with RSNs and the Washington State Institute for Public Policy to estimate the capacity needed

for E&T services within each regional service area. Each RSN must develop and maintain an adequate plan to provide for E&T service needs.

A DMHP must submit a report to the DSHS within 24 hours if the DMHP determines that an adult or minor meets detention criteria but there are not any E&T beds available and the person cannot be served through a single bed certification or LRA. Submission of a report constitutes prima facie evidence that the responsible RSN is in breach of its duty to provide an adequate network of E&T services. The DSHS must develop a standardized form for DMHP reports, which, at a minimum, must contain identifying information for the person, identification of the responsible RSN, a list of facilities that refused to admit the person, and other information. The DSHS must promptly share reported information with the responsible RSN and require the RSN to attempt to engage the person in services and report back within seven days.

The DSHS must track and analyze these reports and initiate corrective action when appropriate to ensure each RSN has implemented an adequate plan to provide E&T services. Corrective action may include enforcement of contract remedies and requiring expenditure of reserve funds. An adequate plan may include development of LRAs such as crisis triage, crisis diversion, voluntary treatment, or prevention programs. The DSHS must publish quarterly reports on its website summarizing information submitted by DMHPs and the number of single bed certifications granted by category.

The DSHS may approve a single bed certification to a facility that is willing and able to provide timely and appropriate treatment to a detained person when an E&T bed is not available. A single bed certification must be specific to the patient receiving treatment. A DMHP who submits an application for single bed certification in good faith belief that the single bed certification is appropriate may presume that the application will be approved for the purpose of completing the detention process and responding to other emergency calls.

<u>Timelines for Initial Detention Assessments and Decisions</u>.
Time prior to medical clearance does not count against: the three-hour timeline for a mental health professional examination and 12-hour timeline for a DMHP to make a detention decision when a person has been detained by law enforcement; the six-hour timeline for a DMHP's detention decision for a person not delivered by law enforcement; or the 24 hours in which a person admitted to an E&T must be examined. The six-hour and 12-hour timelines for detention decisions begin to run from the time the time that professional staff notifies the DMHP, rather than from the time of arrival or time the staff deems a DMHP referral is necessary.

"Medical clearance" is defined as the determination by a physician or other health care provider that a person is medically stable and ready for referral to a DMHP.

Dismissal of a commitment petition is not the appropriate remedy for a violation of the timeliness requirements except in cases where the facility staff or designated mental health professional has totally disregarded the requirements. Intent language is added stating that a presumption in favor of deciding petitions on their merits furthers both public and private interests because the individual's mental and physical well-being, as well as public safety, may be implicated by the decision to release the individual and discontinue his or her treatment.

<u>Assisted Outpatient Treatment</u>.

In addition to likelihood of serious harm and grave disability, a person may be committed for involuntary mental health treatment if that person is "in need of assisted outpatient treatment." The criteria for a finding of in need of assisted outpatient treatment are similar to those in current law for ordering continued LRA placement for up to 180 days.

At every stage in the commitment cycle a court may order a person's commitment on any proven statutory standard. However, commitment for a 72-hour evaluation, if based solely on the person being in need of assisted outpatient treatment, may only be for an outpatient evaluation. Similarly, commitment for further treatment, if based solely on the person being in need of assisted outpatient treatment, may only be for treatment on a LRA order, and may not be for inpatient treatment.

A person is in need of assisted outpatient treatment if, as a result of a mental disorder:

- the person has been involuntarily committed to detention for involuntary mental health treatment at least twice during the preceding 36 months, or, if currently committed, the person has been involuntarily committed to detention at least once during the 36 months preceding the initial detention in the current commitment cycle;
- the person is unlikely to voluntarily participate in outpatient treatment without an order for LRA treatment, in view of the person's treatment history or current behavior; and
- outpatient treatment that would be provided under a LRA order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time.

The 36-month calculation excludes any time spent in a mental health facility or in confinement as a result of a criminal conviction.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except Sections 110 and 202, which due to prior delayed effective dates take effect April 1, 2016, and Sections 101 through 109, 111, and 112, regarding adequate evaluation and treatment services, single bed certification, and timelines for initial detention decisions and assessments, which take effect immediately. Sections 201 through 210, regarding assisted outpatient treatment, are null and void if not funded in the budget.