

FINAL BILL REPORT

E2SSB 5649

C 269 L 15
Synopsis as Enacted

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).

Senate Committee on Human Services, Mental Health & Housing

Senate Committee on Ways & Means

House Committee on Judiciary

House Committee on Appropriations

Background: The Involuntary Treatment Act (ITA) allows a designated mental health professional (DMHP) to detain a person when the DMHP finds that the person, as a result of a mental disorder, presents a likelihood of serious harm or is gravely disabled, and that the person has refused voluntary treatment. The ITA requires persons to be detained to an evaluation and treatment facility (E&T). An E&T is defined as any facility which 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 which is certified as such by the Department of Social and Health Services (DSHS).

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, or within 12 hours from arrival at the facility if the person was brought in by a peace officer.

In August the Washington Supreme Court decided *In re D.W.*, 181 Wn.2d 201 (2014), in which the court determined that current statutes and rules under the ITA do not allow DSHS to temporarily certify single E&T beds unless the person requires a service which is not available at an E&T, and do not authorize single bed certification based on lack of room at a regularly certified E&T facility. In response DSHS enacted emergency rule changes in August, September, and December. Washington Administrative Code now allows DSHS to grant a single bed certification if the single bed certification is to a facility that is willing and able to provide timely and appropriate mental health treatment, either directly or by arrangement with other agencies. Examples of facilities that may be approved for single bed certifications include community facilities, residential treatment facilities, hospitals with psychiatric units, psychiatric hospitals, and hospitals that are willing and able to provide

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timely and appropriate mental health treatment. Also in response, DSHS collaborated with the Governor's Office and others to make 145 additional regularly certified E&T beds available for detention in King, Pierce, and Snohomish counties by the end of 2014, with additional expansion of beds planned in 2015.

Summary: Regional support networks (RSNs) must provide for an adequate network of E&T services to ensure access to treatment for persons who meet ITA detention criteria. DSHS must collaborate with the RSNs and the Washington State Institute for Public Policy to estimate the capacity needed for E&T services within each regional service area, including consideration of average occupancy rates needed to ensure access to treatment. Each RSN must develop and maintain an adequate plan to provide for E&T service needs.

A DMHP must submit a report to DSHS within 24 hours if the DMHP determines that an adult or minor meets ITA detention criteria but there are not any E&T beds available to admit the person within the time available for evaluation, and the person cannot be served through a single bed certification or less restrictive alternative (LRA). DSHS must develop a standardized form for the DMHP to use to submit this report, including a list of facilities which refused to admit the person. 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. DSHS must track and analyze these reports and initiate corrective actions, including but not limited to enforcement of contract remedies and requiring expenditure of reserve funds, to ensure that each RSN has implemented an adequate plan to provide for E&T services. An adequate plan may include development of LRAs to involuntary commitment such as crisis triage, crisis diversion, voluntary treatment, or prevention programs reasonably calculated to reduce the demand for E&T services. DSHS must publish quarterly reports on its website summarizing information submitted by DMHPs and the number of single bed certifications granted by category.

DSHS may approve the single bed certification of E&T beds to be used for detention under the ITA, if the bed is located in a facility that is willing and able to provide timely and appropriate treatment to the person, either directly or by arrangement with other public or private agencies. 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 at a facility that is willing and able to provide timely and appropriate treatment may presume that the application will be approved for the purpose of completing the detention process and responding to other emergency calls.

The six-hour time limit for a DMHP to complete an evaluation of a person held in an emergency room or triage facility, or 12-hour time limit to complete the evaluation if the person was placed in the facility by a peace officer, must start upon notification to the DMHP of the need for evaluation and must not begin until there is medical clearance. Medical clearance means a physician or other health care provider has determined that the person is medically stable and ready for referral to the DMHP. Dismissal of the commitment petition is not an appropriate remedy for violation of these timeliness requirements except in the few cases where the facility staff or DMHP has totally disregarded statutory requirements.

The intent of the ITA is updated to include protecting the health and safety of persons suffering from mental disorders and protecting public safety through use of the *parens*

patriae and police powers of the state. When construing ITA requirements, courts must focus on the merits of the petition, except where requirements have been totally disregarded.

Votes on Final Passage:

Senate	46	3	
House	90	7	(House amended)
Senate	45	2	(Senate concurred)

Effective: July 24, 2015
May 14, 2015 (Sec. 1-9, 11-13)
April 1, 2016 (Section 10, 14)