HOUSE BILL REPORT
ESSB 6491

As Reported by House Committee On:
Judiciary
Appropriations

Title: An act relating to increasing the availability of assisted outpatient behavioral health treatment.

Brief Description: Increasing the availability of assisted outpatient behavioral health treatment.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban and Darneille).

Brief History:
Committee Activity:
Judiciary: 2/20/18, 2/22/18 [DPA];
Appropriations: 2/26/18 [DPA(JUDI)].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Makes changes to the assisted outpatient mental health treatment standard, criteria, and process.
- Makes changes to less restrictive alternative treatment services.
- Allows for the revocation of less restrictive alternative treatment orders entered on assisted outpatient behavioral health treatment commitment grounds.
- Beginning April 1, 2018, authorizes a court conducting a review of a designated crisis responder's decision not to detain a person under the Involuntary Treatment Act to order a person to involuntary outpatient treatment.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Haler, Kirby, Klippert, Muri and Valdez.

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.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Minority Report: Without recommendation. Signed by 1 member: Representative Goodman.

Staff: Ingrid Lewis (786-7289).

Background:

Standards for Involuntary Mental Health Treatment.
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, is gravely disabled, or is in need of assisted outpatient mental health treatment (AOT).

Designated mental health professionals (DMHPs) are responsible for investigating and determining whether an individual may be in need of involuntary treatment. Designated mental health professionals are designated by a county or the behavioral health organization in a region. The DMHP may petition the court for initial detention for evaluation and treatment for up to 72 hours if the person poses a likelihood of serious harm or is gravely disabled. Under nonemergent conditions, a court order is required for an initial detention. If the person is in need of AOT, the DMHP may petition the court for an initial involuntary outpatient evaluation.

A court order to either detain a person for a 72-hour period for evaluation and treatment or to conduct an involuntary outpatient evaluation may be issued upon the DMHP's request when the court finds that there is probable cause to support the petition and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

Assisted Outpatient Commitment.
Assisted Outpatient Treatment Commitment Standard.

A person is in need of AOT if the person, as a result of a mental disorder:

- 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;
- is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative (LRA) treatment, in view of treatment history or current behavior;
- is unlikely to survive safely in the community;
- is likely to benefit from LRA treatment; and
- requires LRA treatment 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.

Procedures for Assisted Outpatient Treatment Commitment.

Upon a petition at any stage in the commitment cycle, a court may order a person's commitment on any proven statutory standard. However, a petition for a 72-hour evaluation, if based solely on the person being in need of AOT, may only be for involuntary outpatient evaluation. Similarly, a person subject to AOT may not be committed for additional inpatient treatment pursuant to an AOT order.

Prior to filing a petition for involuntary outpatient evaluation, the DMHP must assess the credibility of the information received and attempt to interview the person about whom the information has been provided. The DMHP cannot seek an involuntary outpatient evaluation unless satisfied that the allegations are true and the person will not voluntarily seek appropriate treatment. Upon a court finding of probable cause on the petition for outpatient evaluation, the DMHP is required to serve the initial petition and order for evaluation to the person, the person's attorney, and the person's guardian or conservator, if any. Once an evaluation has taken place, a petition for AOT may be filed by two health professionals and must include involvement or consultation with the facility or agency that will provide LRA treatment. The petition for AOT must be reviewed in superior court at the probable cause hearing within 72 hours following the outpatient evaluation.

Less Restrictive Alternative Treatment.
When entering an order for involuntary mental health treatment, if a court finds that treatment in a LRA than inpatient commitment is in the best interest of the person or others, the court must order an appropriate less restrictive course of treatment.

Less restrictive alternative treatment is statutorily defined and must include a variety of services, including but not limited to medication management.

Less restrictive alternative treatment is for up to 90 days if ordered instead of a 14- or 90-day inpatient order. An LRA order may be modified or revoked if the person is failing to adhere to the terms and conditions of the court ordered treatment, is substantially deteriorating or decompensating, or poses a likelihood of serious harm.

If the DMHP, the facility or agency providing treatment, or the Department of Social and Health Services determines that any of the conditions justifying modification or revocation are met, the person may be detained to an evaluation and treatment facility pending a hearing. A court hearing must be held within five days of the revocation. If the court finds that the conditions are met, the court may modify the terms of the LRA order or return the person to an inpatient facility.

A person subject to AOT may have an order for LRA treatment modified but may not be detained for the purpose of revocation if the person does not comply with the order or experiences substantial deterioration in function; instead, a new petition for involuntary treatment must be initiated.

Court Review of Initial Detention Decisions ("Joel's Law").
When a DMHP decides not to detain a person for evaluation and treatment, or does not take action to have a person detained within 48 hours of a request for an investigation, the person's immediate family member, or guardian or conservator, may petition the superior court for the person's initial detention.

Within five days of a petition being filed, the court must render a final decision. An order for initial detention may be entered if the court finds, upon review of the provided information, that there is probable cause to support a petition for initial detention and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

Integrated Mental Health and Substance Use Disorder Treatment Systems.
Beginning April 1, 2018, the ITA is expanded to include commitments for substance use disorders (SUD). A person who meets criteria for involuntary SUD treatment may be detained and committed to a secure detoxification facility or appropriate SUD treatment program, subject to bed or program availability. Substance use disorder commitments will follow the same procedures, rights, requirements, and timelines as mental health commitments.

Under the integrated system, DMHPs will be replaced by designated crisis responders (DCRs) who will be authorized to conduct mental health and SUD investigations and detain persons for up to 72 hours to the proper facility. Designated crisis responders will be designated by the behavioral health organization in a region.

Summary of Amended Bill:

Assisted Outpatient Commitment.
Commitment on the grounds of needing assisted outpatient mental health treatment (AOT) is expanded to include need for treatment based on a substance use disorder (SUD) starting April 1, 2018, and is renamed assisted outpatient behavioral health treatment (AOBHT).

Assisted Outpatient Behavioral Health Treatment Commitment Standard.

In order to meet the criteria for commitment based on AOBHT grounds, a person must have a history of one detention in the preceding 36 months. The finding that a person is unlikely to survive safely in the community is no longer required.

Procedures for Assisted Outpatient Behavioral Health Treatment Commitment.

The petition process for AOBHT is changed in the following ways:

- a designated crisis responder (DCR) is given 48 hours to complete an initial AOBHT investigation;
- the requirement for a DCR petition and court order for outpatient evaluation is removed;
- upon completion of an investigation, a DCR, without a declaration from two health professionals, may file a petition for AOBHT; and
- the timeframe in which a probable cause hearing must occur is extended to within five days of filing a petition for AOBHT, rather than three days.

Less Restrictive Alternative Treatment.

Medication management is eliminated as a required less restrictive alternative (LRA) service and is added as optional service. A treating agency is required to notify a care coordinator if the person is substantially not complying with court-ordered treatment.

A person subject to AOBHT may have an order for LRA treatment revoked by a DCR if the person meets criteria for inpatient treatment and may be detained at an appropriate facility for up to 72 hours pending a hearing.

Court Review of Initial Detention Decisions ("Joel's Law").
The remedy available to an immediate family member, or guardian or conservator, of a person based on a petition for court review of a DCR decision to not detain a person under the ITA is expanded to include an order for AOBHT.

Designated Crisis Responders.
A DCR may be appointed by a county or an entity appointed by a county, in addition to the behavioral health organization for the region.

Amended Bill Compared to Engrossed Substitute Bill:

The amended substitute makes the following changes:

- requires that a person have a history of one detention in the preceding 36 months to meet the commitment standard for assisted outpatient behavioral health treatment;
- changes the notification requirement of substantial noncompliance with court-ordered treatment to a care coordinator instead of a designated crisis responder;
- restores the revocation provisions for less restrictive alternative treatment for commitments entered on the commitment grounds of serious harm or grave disability;
- inserts a severability clause; and
- makes other stylistic and technical changes, and minor substantive revisions.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections, 5, 8, and 10, which because of prior delayed effective dates take effect July 1, 2026, and sections 1 through 4, 6, 7, 9, 11, 12, 13, and 15, relating to substance use disorder treatment under laws in effect until April 1, 2018, which contain an emergency clause and take effect immediately.

Staff Summary of Public Testimony:

(In support) This is an important tool to be used by the behavioral health community. A person who is chronically mentally ill or addicted to a substance should not have to wait until they have to be detained to receive treatment. This allows for a quicker intervention and keeps the individual in the community. This provides intervention with teeth, so that individuals get needed treatment. The changes in the bill streamline the process so that the

treatment is more accessible. In addition, as the state moves towards integration, the bill makes assisted outpatient treatment available for substance use disorders.

(Opposed) None.

(Other) Reducing barriers to treatment and allowing those with substance use disorders to access treatment is in the best interests of both the person needing treatment and the community. A suggestion is to change the number of hospitalizations from zero to one. The New York and Substance Abuse and Mental Health Services Administration assisted outpatient treatment models recommend a standard of two commitments within a 36-month period. A requirement for two hospitalizations is too high; one is a compromise.

Reports of noncompliance with court ordered treatment should be referred to provider care coordinators instead of designated crisis responders. Care coordinators are better equipped to work with the person on available options.

The bill should be amended to limit the initial detention standard to only those on assisted outpatient commitment subject to less restrictive alternative orders instead of less restrictive orders entered on the other commitment grounds. This would retain revocation for regular less restrictive orders at a lower standard.

The government must proceed cautiously with any bill that has to do with behavioral health. Involuntary treatment is a human rights and civil liberties issue. A person needing behavioral health treatment can be deprived of their freedom more easily than a person who has committed a crime.

Persons Testifying: (In support) Senator O'Ban, prime sponsor.

(Other) Melanie Smith, National Alliance on Mental Illness Washington; Brad Banks, County Behavioral Health Organizations; and Michael Brunson.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Judiciary. Signed by 32 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Graves, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Tharinger, Vick, Volz and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections, 5, 8, and 10, which because of prior delayed effective dates take effect July 1, 2026, and sections 1 through 4, 6, 7, 9, 11, 12, 13, and 15, relating to substance use disorder treatment under laws in effect until April 1, 2018, which contain an emergency clause and take effect immediately.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.