

SENATE BILL REPORT

ESHB 2099

As Reported by Senate Committee On:
Behavioral Health Subcommittee to Health & Long Term Care, February 27, 2020

Title: An act relating to the use of video technology under the involuntary treatment act.

Brief Description: Concerning the use of video technology under the involuntary treatment act.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Irwin and Jinkins).

Brief History: Passed House: 1/16/20, 96-0.

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 2/21/20, 2/27/20 [DPA].

Brief Summary of Amended Bill

- Allows a designated crisis responder to conduct a civil commitment evaluation over video if a professional is present with the person.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille, Frockt and O'Ban.

Staff: Kevin Black (786-7747)

Background: Involuntary Commitment for Behavioral Health. A person may be detained for involuntary treatment under the Involuntary Treatment Act (ITA) during a period of crisis if an investigation by a designated crisis responder (DCR) determines that the person has a mental disorder or substance use disorder (SUD) that causes them to present a likelihood of serious harm or to be gravely disabled.

Grounds for Civil Commitment. Likelihood of serious harm means:

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- a substantial risk the person will inflict physical harm upon themselves or others, evidenced by threats or attempts to commit suicide, cause physical harm, or place another person in reasonable fear of sustaining such harm;
- a substantial risk the person will inflict physical harm on the property of others, evidenced by behavior which has caused substantial loss or damage; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

Gravely disabled means:

- being in danger of serious physical harm resulting from failure to provide for the person's essential human needs of health or safety; or
- experiencing severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control and the person is not receiving care essential to their health or safety.

Procedures for Initial Evaluation. A peace officer or other entity at the request of a DCR may detain a person in an emergency room, triage facility, crisis stabilization unit, evaluation and treatment facility (E&T), or secure withdrawal management and stabilization facility (SWMS) for up to 12 hours for a DCR investigation, or for up to 6 hours if the person self-presents to the facility or is brought to the facility and refuses voluntary admission. Before filing a petition, the DCR must personally interview the person, unless the person refuses the interview, and determine whether the person will voluntarily seek appropriate treatment. If the DCR determines that further detention for treatment is appropriate, the DCR must detain the person to an E&T, SWMS, or facility willing to provide treatment pursuant to a single-bed certification. The length of detention is for 72 hours excluding weekends and holidays and triggers a number of rights on behalf of the detained person, including the right to counsel and the right to a court hearing if detention continues beyond the 72-hour period. Detention may continue with court authorization for renewable periods of 14, 90, or 180 days, unless the court dismisses the petition or orders the person to receive treatment in the community as a less restrictive alternative.

Use of Video in Relation to Involuntary Treatment. In 2017, the Washington Court of Appeals, Division One, decided in the case of *In re Det. of J.N.* that a person who is detained for involuntary treatment has a statutory right to be physically present in an involuntary treatment hearing which cannot be satisfied by the use of video testimony. The Washington Supreme Court granted review in January 2018 and has not released a decision. Two months later, the Legislature enacted SSB 6124 (2018) which amended state law to allow involuntary treatment hearings to be conducted with the detained person, witnesses, and the judicial officer participating by video, as long as the technology allows all parties to see, hear, and speak during the hearing, and the detained person's counsel is able to be in the same room as the person. The Washington Supreme Court declared the case moot and dismissed their grant of review in May 2018.

Summary of Amended Bill: A DCR may evaluate a person for civil commitment over interactive video, as long as a licensed health care professional or professional person is present with the person at the time of the interview.

EFFECT OF BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):

- Adopts technical and clarifying amendments.
- Eliminates sections making non-substantive amendments related to conducting involuntary commitment hearings by video.

Appropriation: None.

Fiscal Note: Not requested.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: My wife runs the emergency room for a critical access hospital. They have a hard time bringing DCRs out to do timely evaluations. If the DCR is not available, the person is boarded with minimal care. We can use technology as a force multiplier for the DCR workforce. The requirement for a licensed health professional to be present will give a human touch and alleviate concerns about a video evaluation being impersonal. This issue has been of interest for a long time. Our members in rural areas view this as extremely helpful, especially on rural roads in inclement weather. The workforce issue in behavioral health is compounded by increasing traffic congestion in urban areas. This is a tool we would like to have.

CON: Imagine if you are in an ER, strapped to a bed at 2 a.m. during a psychotic episode, and someone wheels up a television showing a person asking you personal questions about mental health. These are not the ingredients for a fruitful encounter. Clients can be paranoid and will shut down at things that are unfamiliar. Some clients have broadcast delusions and believe they get messages from the television, and this will aggravate their condition. The DCR must make important credibility calls and will not be able to do so as effectively over the television. The provisions relating to video hearings are addressed in other laws. Video hearings should not be allowed in the rare circumstances of a jury trial. An amendment should be offered prohibiting use of telepsychiatry for commitment evaluations for the purpose of convenience, and only allow it when there is an imminent need. In smaller jurisdictions, video hearing equipment is not sophisticated enough to allow exhibits to be admitted during commitment hearings. Use of video makes things a little less real.

Persons Testifying: PRO: Representative Morgan Irwin, Prime Sponsor; Abby Moore, Washington Council for Behavioral Health.

CON: Mike De Felice, Washington Defender Association, Washington Association of Criminal Defense Lawyers; Kari Reardon, Washington Defender Association, Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.