

FINAL BILL REPORT

SHB 1773

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Synopsis as Enacted

Brief Description: Concerning assisted outpatient treatment for persons with behavioral health disorders.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Taylor, Davis, Leavitt, Callan, Cody, Macri, Ormsby and Harris-Talley).

House Committee on Civil Rights & Judiciary

House Committee on Appropriations

Senate Committee on Health & Long Term Care

Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care

Senate Committee on Ways & Means

Background:

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for involuntary behavioral health treatment of adults. A person may be committed by a court for involuntary behavioral health treatment if he or she, due to a mental health or substance use disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient behavioral health treatment (AOBHT).

A designated crisis responder (DCR) is a mental health professional responsible for investigating and determining whether a person may be in need of involuntary treatment. A person may be committed for involuntary inpatient treatment only on the basis of likelihood of serious harm or grave disability. Where the petition is based on the person being in need of AOBHT, the commitment may only be for treatment in an outpatient setting under a less restrictive alternative treatment (LRA) order. The provisions governing involuntary treatment of minors over the age of 13 are parallel with the adult ITA in many respects, but do not include provisions for involuntary commitment based on a minor being in need of AOBHT.

Assisted Outpatient Behavioral Health Treatment.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

A person is in need of AOBHT if the person, as a result of a behavioral health disorder:

- has been committed by a court to detention for involuntary behavioral health treatment during the preceding 36 months;
- is unlikely to voluntarily participate in outpatient treatment without an LRA order, based on a history of nonadherence with treatment or in view of the person's current behavior;
- 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 time.

In order to file a petition for AOBHT, the DCR must conduct an investigation and determine that the person meets criteria. The DCR may spend up to 48 hours to conduct the investigation. If the DCR finds that a person is in need of AOBHT, the DCR files a petition for up to 90 days of LRA treatment and must provide the person with a summons to the court hearing and serve the petition on the person and the person's attorney. The probable cause hearing must be held within five judicial days of the filing of the petition. If the court finds that the person meets criteria, the court may enter an order for 90 days of LRA treatment.

Less Restrictive Alternative Treatment.

When entering an order for involuntary treatment, if the court finds that treatment in a less restrictive alternative than detention is in the best interest of the person, the court must order an appropriate less restrictive course of treatment rather than inpatient treatment. Less restrictive alternative treatment must include specified components, including assignment of a care coordinator, an intake evaluation and psychiatric evaluation, a schedule of regular contacts with the treatment provider, a transition plan addressing access to continued services at the end of the order, and individual crisis plan. In addition, LRA treatment may include additional requirements, including a requirement to participate in medication management, psychotherapy, residential treatment, and periodic court review.

Enforcement of Less Restrictive Alternative Treatment Orders.

Either a DCR or the agency or facility providing services under an LRA order may take a number of actions if a person fails to adhere to the terms of the LRA order, if the person is suspected of experiencing substantial deterioration in functioning or substantial decompensation that can with reasonable probability be reversed, or if the person poses a likelihood of serious harm.

A DCR or the Secretary of the Department of Social and Health Services may revoke the LRA order by placing the person in detention and filing a petition for revocation. A hearing on the petition must be held within five days. Except for cases where the LRA order is based on AOBHT, the court must determine whether: the person has adhered to the terms of the LRA order; substantial deterioration in functioning has occurred; there is evidence of substantial decompensation with a reasonable probability that it can be reversed by inpatient

treatment; or there is a likelihood of serious harm. If the court makes one of these findings, the court may reinstate or modify the order, or it may order a further period of detention for inpatient treatment.

If the LRA order is based solely on the person being in need of AOBHT, the court must determine whether to continue the detention for inpatient treatment or reinstate or modify the person's LRA order. To continue the detention, the court must find that the person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled and no less restrictive alternatives to involuntary detention and treatment are in the best interest of the person or others.

Summary:

Assisted outpatient behavioral health treatment is renamed assisted outpatient treatment (AOT). New standards and procedures are established for commitments for persons who are in need of AOT.

Assisted Outpatient Treatment Criteria.

The definition of "in need of assisted outpatient treatment" is revised. A person is in need of AOT if the court finds by clear, cogent, and convincing evidence that:

- The person has a behavioral health disorder.
- Based on a clinical determination and the person's treatment history and current behavior, at least one of the following is true:
 - The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating.
 - The person is in need of AOT in order to prevent a relapse or deterioration that would be likely to result in grave disability or a likelihood of serious harm.
- The person has a history of lack of compliance with treatment that has:
 - at least twice within the 36 months prior to the filing of the petition, been a significant factor in necessitating the person's hospitalization or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, provided that the 36-month period must be extended by the length of any hospitalization or incarceration that occurred within the 36-month period;
 - at least twice within the 36 months prior to the filing of the petition been a significant factor in: necessitating emergency medical care; necessitating hospitalization for behavioral health-related medical conditions including overdose, infected abscesses, sepsis, endocarditis, or other maladies; or behavior that resulted in the person's incarceration; or
 - resulted in one or more violent acts, threats, or attempts to cause serious physical harm to the person or another within the 48-months prior to the filing of the petition, provided that the 48-month period must be extended by the length of any hospitalization or incarceration that occurred within the 48-month period.

- Participation in an AOT program would be the least restrictive alternative necessary to ensure the person's recovery and stability.
- The person will benefit from AOT.

Petition Process.

Assisted outpatient treatment is removed from the DCR investigation and petition process. Instead, a petition for up to 18 months of LRA treatment on the basis that a person is in need of AOT may be filed by: the director of a hospital where the person is hospitalized or the director's designee; the director of a behavioral health service provider providing behavioral health care or residential services to the person or the director's designee; the person's treating mental health professional or substance use disorder professional or one who has evaluated the person; a DCR; a release planner from a corrections facility; or an emergency room physician.

The petitioner must personally interview the person, unless the person refuses an interview, to determine whether the person will voluntarily receive appropriate treatment. The petitioner must allege specific facts based on personal observation, evaluation, or investigation, and must consider the reliability or credibility of any person providing information material to the petition. The petition must include specified information, including a declaration from a physician, physician assistant, advanced registered nurse practitioner, or the person's treating mental health professional or substance use disorder professional, who has examined or attempted to examine the person no more than 10 days prior to the filing of the petition and who is willing to testify in support of the petition.

The court must schedule an AOT petition for hearing three to seven days after the date of service, or as stipulated by the parties, but no later than 30 days after service. The court may conduct an AOT hearing in the respondent's absence if the respondent fails to appear and the respondent's counsel is present. The court may order detention of the respondent for an examination by a qualified professional if the respondent has refused an examination and there are reasonable grounds to believe the allegations in the petition are true.

If the petition involves a person whom the petitioner or behavioral health administrative services organization knows, or has reason to know, is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe within Washington, the behavioral health administrative services organization must notify the tribe and Indian health care provider.

The Administrative Office of the Courts must develop court forms and a user's guide for preparation and filing of AOT petitions.

Less Restrictive Alternative Treatment.

Less restrictive alternative treatment, including for conditional release to LRA treatment for persons who have been civilly committed under criminal insanity laws, may include a requirement to participate in partial hospitalization or intensive outpatient treatment

services, or both.

Less restrictive alternative treatment orders based on a person being in need of AOT are subject to the same standards for modification or revocation as for other LRA orders. This includes allowing the court to order the respondent to be detained for inpatient treatment if: the person has failed to adhere to the court order; experienced substantial deterioration in functioning; experienced substantial decompensation which can be reversed by inpatient treatment; or presents a likelihood of serious harm and detention for inpatient treatment is appropriate. The period of inpatient treatment following revocation of an LRA order resulting from a petition for AOT is 14 days from the date of the revocation hearing.

Other.

The law governing involuntary behavioral health treatment for minors is amended to allow a petition for LRA treatment for adolescents who are 13 to 17 years old on the basis that the adolescent is in need of AOT, under the same criteria and standards that apply for adults in need of AOT.

Behavioral health administrative services organizations must employ an AOT program coordinator to oversee system coordination and legal compliance for AOT.

The development of an individualized discharge plan for a person committed to a state hospital for 90 or 180 days must include consideration of whether a petition should be filed for LRA treatment on the basis the person is in need of AOT.

Votes on Final Passage:

House	87	8	
Senate	47	1	(Senate amended)
House	90	8	(House concurred)

Effective: June 9, 2022

July 1, 2022 (Sections 1 and 31)

Contingent (Sections 2 and 10)

July 1, 2026 (Sections 6, 13, 18, and 24)

October 1, 2022 (Section 27)