

# SENATE BILL REPORT

## SHB 1773

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As of February 15, 2022

**Title:** An act relating to assisted outpatient treatment for persons with behavioral health disorders.

**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).

**Brief History:** Passed House: 2/11/22, 87-8.

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care: 2/16/22.

### Brief Summary of Bill

- Amends criteria for a court to order assisted outpatient behavioral health treatment, and changes terminology to assisted outpatient treatment (AOT).
- Allows additional entities to file an AOT petition requesting an order for involuntary outpatient treatment, and changes procedures for filing the petition.
- Increases the duration of an AOT order from up to 90 days to up to 18 months.
- Expands AOT to include adolescents aged 13 to 17.
- Amends procedures for revocation of an AOT order.
- Allows a court to impose partial hospitalization as a condition of a less restrictive alternative treatment order.

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SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH

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## & LONG TERM CARE

**Staff:** Kevin Black (786-7747)

**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. 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.

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 of Bill:** AOBHT is replaced with the term assisted outpatient treatment (AOT). Existing criteria for AOBHT are replaced with the following criteria, which allow a court to impose an AOT order if it finds the following circumstances are proven by clear, cogent, and convincing evidence:

- the person has a behavioral health disorder;
- based on a clinical determination, 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; or
  - 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 to the person or to others;
- the person has a history of lack of compliance with treatment for their behavioral health disorder, in that at least one of the following is true:
  - the person's behavioral health disorder has, at least twice within the 36-month

period preceding filing of the petition or preceding the most recent period of hospitalization or incarceration if the petition is filed within 30 days of release from hospitalization or incarceration, been a substantial factor in necessitating hospitalization or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility;

- the person's behavioral health disorder has, at least twice within the last 36 months, been a substantial factor in necessitating emergency medical care or behavioral health-related medical conditions including overdose, infected abscesses, sepsis, endocarditis, or other maladies, or a substantial factor resulting in the person's incarceration in a state or local correctional facility; or
- the person's behavioral health disorder has resulted in one or more violent acts, threats, or attempts to cause serious physical harm to themselves or another within the 48-month period preceding filing of the petition or preceding the most recent period of hospitalization or incarceration if the petition is filed within 30 days of release from hospitalization or incarceration;
- the person has been offered an opportunity to participate in a treatment plan and the person declines voluntary services or is determined by the court to not have accepted voluntary services in good faith;
- participation in an AOT program would be the least restrictive alternative necessary to ensure the person's recovery and stability; and
- the person will benefit from AOT.

The individuals who may file a petition for AOT are expanded. An AOT petition may be filed by any of the following individuals:

- the director of a hospital where the person is hospitalized;
- the director of a behavioral health service provider providing health care or residential services to the person;
- the person's treating mental health professional or substance use disorder professional, or one who has evaluated the person;
- a designated crisis responder;
- a release planner from a correctional facility; or
- an emergency room physician.

The length of an initial AOT order is increased from up to 90 days to up to 18 months. Existing requirements for filing an AOT petition are replaced, and instead an AOT petition must include a declaration from a physician, physician assistant, advanced registered nurse practitioner, or the person's treating mental health disorder professional or substance use disorder professional certifying they are willing to testify in support of the petition and that they have examined the person no more than ten days prior to the submission of the petition, or alternatively that they have made appropriate attempts to examine the person within that time period but were not successful in obtaining the person's cooperation. A declaration by a treating mental health disorder professional or substance use disorder professional must be co-signed by a supervising physician, physician assistant, or advanced registered nurse practitioner who certifies that they have reviewed the declaration. If the

person is detained at the time the petition is filed, the petition must include the person's anticipated release date and other details needed to facilitate successful reentry and transition to the community.

An AOT petition must be served on the prosecuting attorney, who must review the petition and may consult with the petitioner to conform the petition to legal requirements. The prosecutor may decline to proceed with a petition which does not meet legal requirements. If the petition meets legal requirements, the prosecutor must schedule the petition for a hearing and cause the petition and a summons to appear to be served on the person and their counsel.

AOT is expanded to include adolescents aged 13 to 17.

A discharge plan from a hospital where a person is detained for long-term involuntary treatment must include consideration of whether to file an AOT petition.

The options for less restrictive alternative treatment, including less restrictive alternative treatment on the basis that a person is in need of AOT, are expanded to allow a court to order the respondent to participate in partial hospitalization services.

Procedures and standards for revocation of an AOT order are merged and aligned with the standards for revocation of other less restrictive alternative treatment orders. An agency, facility, or designated crisis responder may request assistance from a peace officer to temporarily detain a person subject to a less restrictive alternative treatment order for up to 12 hours for an evaluation for the purposes of determining whether to file a petition to revoke a less restrictive alternative treatment order. A petition for revocation must be filed within 24 hours and served upon the person, their guardian if any, and their attorney. If the court revokes the AOT order, the period of detention is for 14 days. The court must consider the following issues when determining whether to revoke a less restrictive alternative order:

- whether the person has adhered to the terms and conditions of the order;
- whether substantial deterioration in the person's functioning has occurred;
- whether there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment;
- whether there is a likelihood of serious harm; and
- whether, if any of the above conditions apply, it is appropriate for the court to reinstate or modify the person's less restrictive alternative treatment order or to order the person's detention for inpatient treatment.

A behavioral health administrative services organization is required to employ an AOT program coordinator to oversee system coordination and legal compliance related to AOT.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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