# SENATE BILL REPORT
# SB 5655

As Reported by Senate Committee On:
Health & Long Term Care, January 12, 2022
Behavioral Health Subcommittee to Health & Long Term Care, January 28, 2022

**Title:** An act relating to making state hospitals available for short-term detention and involuntary commitment.

**Brief Description:** Making state hospitals available for short-term detention and involuntary commitment. [**Revised for 1st Substitute:** Concerning individuals who experience refusals of service for involuntary behavioral health treatment.]

**Sponsors:** Senators Dhingra, Lovick and Wilson, C..

**Brief History:**
**Committee Activity:** Health & Long Term Care: 1/12/22 [w/oRec-BH].
Behavioral Health Subcommittee to Health & Long Term Care: 1/14/22, 1/28/22 [DPS-WM].

**Brief Summary of First Substitute Bill**

- Establishes a task force on individuals who experience refusals of service for involuntary behavioral health treatment and are then referred to state hospitals for forensic competency services, with four legislative members.
- Requires the task force to report preliminary recommendations by October 15, 2022, and final recommendations by December 1, 2022.

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

**Majority Report:** That Substitute Senate Bill No. 5655 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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*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.*

Signed by Senators Frockt, Chair; Wagoner, Ranking Member; Dhingra, Nobles and Warnick.

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

**Background:** State Hospitals. There are three state hospitals in Washington: Western State Hospital in Lakewood, Eastern State Hospital in Medical Lake, and the Child Study & Treatment Center in Lakewood. The first two serve adults and the third serves children. The state hospitals primarily serve patients who are committed for involuntary treatment by a civil or forensic court process. They are operated by chief executive officers and fall under the administration of the Department of Social and Health Services (DSHS). The state hospitals specialize in long-term care, but at times in their history have accepted short-term involuntary patients.

Civil Commitment for Behavioral Health. A person may be detained for involuntary treatment under the Involuntary Treatment Act if, in response to a crisis line call, a designated crisis responder (DCR) determines that the person has a behavioral health disorder that causes them to present a likelihood of serious harm or to be gravely disabled.

Likelihood of serious harm means:

- there is a substantial risk the person will inflict physical harm upon themself or others, evidenced by threats or attempts to commit suicide, cause physical harm, or place another person in reasonable fear of sustaining such harm;
- there is 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 the person is:

- 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 is not receiving care essential to their health or safety.

Civil Commitment Options. A DCR may cause the person to be placed in initial detention for up to 12 hours for a civil commitment investigation. Initial detention may occur at an emergency room, triage facility, crisis stabilization unit, evaluation and treatment facility (E&T), or secure withdrawal management and stabilization facility (SWMS). If the DCR determines further detention is needed after the 12-hour initial detention period, the DCR must detain the person to an E&T for treatment of a mental disorder, to a SWMS for treatment of a substance use disorder, or, if neither is available, to a voluntary treatment facility which is willing and able to provide treatment through a temporary authorization known as a single-bed certification. This period of treatment may last for up to 120 hours,

excluding weekends and holidays. A court hearing is required in order to extend treatment for an additional 14-day period, which continues at an E&T, SWMS, or single-bed certification facility.

Detention beyond this 14-day period requires a civil trial. If the court or jury authorizes treatment beyond this 14-day period, the patient becomes eligible for transfer either to a state hospital or to a community facility certified for long-term civil commitment. The first extension period is for 90 days, followed by renewable periods of 180 days until the person is discharged by the treatment facility or the court. Prior to about 2016, long-term civil commitment generally occurred in a state hospital, although there could be long waits for state hospital admission, during which patients would continue to receive treatment in community facilities. Since 2016, the state has invested in creating long-term civil commitment facility options in communities across Washington.

Single-Bed Certifications. The Health Care Authority (HCA) may issue a single-bed certification authorizing a voluntary treatment facility to treat an involuntary patient if the facility is willing and able to provide timely and effective mental health services to the person. A single bed certification lasts for 30 days and is specific to the patient. A single-bed certification may be requested for a number of reasons, including to provide medical services not available in a certified facility, to facilitate continuity of care, and to allow a person to receive treatment closer to their home community.

No-Bed Reports. When a DCR is unable to find a placement for a person who meets detention criteria in an E&T, SWMS, or single-bed certification, the DCR must release the person at the end of the initial detention period and file a no-bed report. The report goes to HCA and must be filed within 24 hours. When HCA receives a no-bed report, it must promptly notify the Medicaid managed care organization (MCO) or behavioral health administrative services organization (BH-ASO) responsible for the cost of the person's community behavioral health care. The MCO or BH-ASO must attempt to engage the person in appropriate services and report back to HCA within seven days.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (First Substitute):** A task force is established on individuals who experience refusals of service for involuntary behavioral health treatment and are then referred to state hospitals for forensic competency evaluation and restoration services, to be staffed by the Health Care Authority. The task force must have four legislative members and additional member appointed by the Governor representing:

- the Health Care Authority, Office of the Attorney General, Department of Social and Health Services, Western State Hospital, and Eastern State Hospital;
- two individuals with lived experience of involuntary commitment and two individuals with lived experience as a family member of a person who has experienced involuntary commitment;
- King County, Spokane County, and behavioral health administrative services

organizations;
- the Washington State Hospital Association, Washington State Designated Crisis Responder Association, Washington State Association of Prosecuting Attorneys, and Washington Defender Association, and
- a services provider for forensically involved individuals.

Co-chairs must be chosen, one from among the legislative members and one from among the executive branch members. The task force must review the following issues:
- solutions to provide appropriate treatment for persons who experience difficulty obtaining placement in local evaluation and treatment facilities or secure withdrawal management and stabilization facilities due to a history of one or more violent acts;
- solutions to reduce the need for the use of single bed certifications based on unavailability of appropriate alternative placements;
- solutions to reduce the need for filing no bed available reports; and
- acceptable procedures for obtaining needed medical clearance for involuntary treatment with a goal to reduce or avoid the use of emergency departments.

The task force must convene by June 30, 2022 and report preliminary findings to the Governor and Legislature by October 15, 2022. Final recommendations must be reported by December 1, 2022.

**EFFECT OF CHANGES MADE BY BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE (First Substitute):**

The original bill is stricken and replaced with a task force.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 28, 2022.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

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

**Staff Summary of Public Testimony on Proposed Substitute:** *The committee recommended a different version of the bill than what was heard.* PRO: The reality is a small subset of the population is being failed by the Involuntary Treatment Act (ITA) system. These are some of the largest users of emergency services, who may have a history of violence or involvement in the criminal justice system. There is no blame, everyone is trying to do the best we can, but we must change practices to take better care of citizens with mental illness. When the ITA system fails these individuals, they decompensate further and go on to commit felonies and get pulled into the forensic system. Folks should not have to destabilize to this degree. They are repeat customers, we know who they are, and we should serve them in the civil system. Acuity levels are growing in jails and

hospitals. A woman I encountered received no help from the civil system, no help after being charged with a misdemeanor, and a year later she stabbed her own father. Passage of this bill would provide a big relief to hospital emergency departments, which have seen big surges of mental health patients since the start of the pandemic. Patients who are hard to place in E&Ts end up boarding in emergency departments. They need access to the higher level of care available in state hospitals. These patients present an assault risk for staff.

CON: Western State Hospital has not operated a short term civil admission ward for decades. The wait list for admission for forensic services at the state hospitals is months long. Patients wait for discharge at Western State Hospital for an average of 230 days after they have been determined to be ready, and over 100 days at Eastern State Hospital. Single bed certifications and no-bed reports are a big problem, but this is not the solution. Our mental health system is in crisis, but this is not an effective answer.

OTHER: We respect the intent of this bill, and agree this population could be better served. This bill runs contrary to the direction the state hospitals are going to move the care of civil patients into the community. State hospital admission severs connections to local communities and local resources. Western State Hospital has challenges with physical space, since it is in the process of closing down wards to make room for demolition and construction of a new, modernized hospital. It would have to choose who else not to serve. Staffing challenges and safety concerns held in the community are shared by the state hospitals.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Katie Kolan, Washington State Hospital Association.

CON: Todd Carlisle, Disability Rights Washington; Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense Lawyers.

OTHER: Kevin Bovenkamp, Behavioral Health Administration, DSHS.

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