

SENATE BILL REPORT

SB 5745

As of February 25, 2025

Title: An act relating to appointed counsel for individuals detained under the involuntary treatment act.

Brief Description: Concerning appointed counsel for individuals detained under the involuntary treatment act. [**Revised for 1st Substitute:** Concerning legal representation under the involuntary treatment act.]

Sponsors: Senators Dhingra, Bateman, Lovick, Nobles and Pedersen.

Brief History:

Committee Activity: Law & Justice: 2/17/25, 2/20/25 [DPS-WM, w/oRec].
Ways & Means: 2/25/25.

Brief Summary of First Substitute Bill

- Clarifies and makes changes to the process for appointed counsel under the Involuntary Treatment Act (ITA).
- Allows the Office of Public Defense to provide appointed counsel under the ITA.
- Clarifies the attorney general's role in representing petitioners in ITA proceedings.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5745 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Fortunato, Lovick, Salomon, Valdez and Wagoner.

Minority Report: That it be referred without recommendation.

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 Holy, Ranking Member; Torres.

Staff: Ryan Giannini (786-7285)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Corban Nemeth (786-7736)

Background: Involuntary Treatment. Under the Involuntary Treatment Act (ITA), a person may be committed by a court for involuntary treatment if the person, due to a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled and will not consent to voluntary treatment.

Appointed Counsel. A person subject to commitment is afforded numerous rights and due process protections, including, but not limited to, the right to have an attorney appointed. The cost of appointed counsel is typically borne by local jurisdictions. Local jurisdictions rely on a variety of service models to provide public defense services, including county defense agencies, in which public defenders are employed by local government, and contract systems in which the local government contracts with a non-profit agency, private law firm, or individual attorneys to perform appointed counsel services.

Proceedings. Designated crisis responders (DCRs) are responsible for investigating and determining whether a person may be in need of involuntary treatment. A DCR may be a mental health professional appointed by a managed care organization, or by the Health Care Authority (HCA) in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider.

If the DCR finds a basis for commitment, the DCR may detain or petition a court to order detention for the person for up to 120 hours, excluding weekends and holidays, to an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. After the initial 120-hour detention, the facility providing treatment may petition the court to have the person committed for further behavioral health treatment for 14 days.

Jurisdiction over involuntary mental health treatment proceedings is with the superior court. County prosecutors represent petitioners, unless the petitioner is a state hospital or institution, in which case the attorney general (AGO) provides representation.

Office of Public Defense. The Office of Public Defense (OPD) is a judicial branch agency established to implement the constitutional and statutory guarantees of counsel and to deliver indigent defense services funded by the state. OPD is prohibited from providing direct representation of clients, except in certain limited circumstances, and instead administers state funded services. OPD contracts with attorneys, local governments, and law firms to provide representation of indigent client appeals, indigent parents in

dependency cases, individuals committed as sexually violent predators, individuals committed by reason of insanity, and initial consultations for youth who are stopped or arrested by law enforcement.

Behavioral Health Administrative Services Organizations. A Behavioral Health Administrative Services Organization (BH-ASO) is an entity contracted with the HCA to administer behavioral health services using state funds within a regional service area. BH-ASOs oversee regional crisis lines and designated crisis responders. BH-ASOs also reimburse counties for the direct costs of appointed counsel in civil commitment proceedings.

State Hospitals. The definition of state hospital varies in statute. Some definitions only include Western State Hospital (WSH) and Eastern State Hospital (ESH) which are adult psychiatric hospitals that provide involuntary inpatient treatment for persons with mental disorders who are committed by civil and criminal courts. Other definitions include the Child Study and Treatment Center which is a youth psychiatric hospital that provides involuntary inpatient treatment for children and youth with mental disorders. The hospitals are operated by the Department of Social and Health Services (DSHS).

Summary of Bill (First Substitute): Involuntary Treatment. Appointed Counsel. The county where a person is detained must administer appointed counsel services under the ITA, either directly or by contracting for that representation. A county may elect to have the HCA contract with the OPD for appointed counsel services on the county's behalf. If a county elects to have the HCA contract with OPD, then the county's BH-ASO funding shall be reduced equivalently.

The OPD is required to represent indigent clients in ITA cases, either directly or by contracting, at the request of the HCA on behalf of a county.

Proceedings. The AGO's requirement to represent petitioners in ITA proceedings, except for 14-day petitions, is limited to petitions initiated at state hospitals, the Center for Behavioral Health and Learning located on the University of Washington northwest medical campus, and facilities owned or operated by DSHS that provide inpatient services to individuals under the ITA.

State Hospitals. The definition of "state hospital" is standardized to mean WSH, ESH, and the Child Study and Treatment Center.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Clarifies that the attorney general shall represent, provide legal services, and advise all facilities owned or operated by DSHS that provide inpatient services under the ITA.

- Amends the title.

Appropriation: None.

Fiscal Note: Requested on February 13, 2025.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: The UW Center for Behavioral Health and Learning has beds available for individuals but it has been unable to take on new patients because King County Public Defense is not providing appointed counsel for such patients. This bill maintains current practices and funding models but provides counties and BH-ASOs options on how to provide defense for individuals exiting from state hospitals. OPD currently provides defense counsel in certain civil commitment cases. OPD is ready to provide effective assistance of counsel in ITA cases particularly when county public defender agencies face staffing shortages. This bill addresses challenges faced by public defender agencies when long-term ITA patients are transferred to counties that have state psychiatric hospitals and there is uncertainty about qualified legal representation responsibilities.

OTHER: This bill creates new obligations for counties to provide counsel for long-term involuntarily committed patients. County public defenders should not be the default. The Olympic Heritage Behavioral Health facility is not included in the list of facilities that the attorney general must represent. This would shift responsibility of prosecution to counties for this facility. Permitting counties to hire OPD to defend patients through the HCA adds unnecessary bureaucracy. OPD should provide these services directly to ensure consistency. This bill will potentially create confusion in multi-county regions covered by a BH-ASO. It is not clear what the cost will be for OPD-HCA contracts. It is the state's responsibility to fund new beds. Funding that BH-ASOs receive is largely a block amount, meaning such dollars compete with treatment services.

Persons Testifying (Law & Justice): PRO: Senator Manka Dhingra, Prime Sponsor; Kelly Canary, Washington State Office of Public Defense; Rashi Gupta, UW Medicine.

OTHER: Brad Banks, WSAC & BHASOs; Joe McDermott, State Relations Director | King County.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: OPD has a proven track record of providing high-quality attorneys in commitment hearings statewide, and we

welcome the opportunity to replicate our successful model with these civil commitment cases. There is uncertainty around who is responsible for qualified legal representation in these cases, and this bill allows OPD to assist when local resources are stretched thin. This issue has kept some of the most vulnerable people in the state from receiving care. This bill clarifies an important process for the University of Washington and other facilities in the state that serve individuals with the highest needs. BH-ASO funding for ITA court costs come in a single pot of money that are used for a variety of other crisis services. Court costs compete with other regional services. We would support additional state funding for counties to take this into account.

OTHER: Counties have a public defense workforce issue. The key issue is whether counties are fully reimbursed for this work. Counties are only eligible for reimbursement for direct costs in providing judicial services, but indirect costs are significant. Counties cannot afford to subsidize this work because the state sites a facility in its jurisdiction. It would be more efficient to put primary responsibility for this work with the OPD.

Persons Testifying (Ways & Means): PRO: Kelly Canary, Washington State Office of Public Defense; Rashi Gupta, UW Medicine.

OTHER: Michael White, King County; Brad Banks, Association of Counties & BHASOs.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.