

# *In re D.W.*, Psychiatric Boarding, and Single Bed Certification

Kevin Black and Chris Blake, Legislative staff

ABHS Task Force

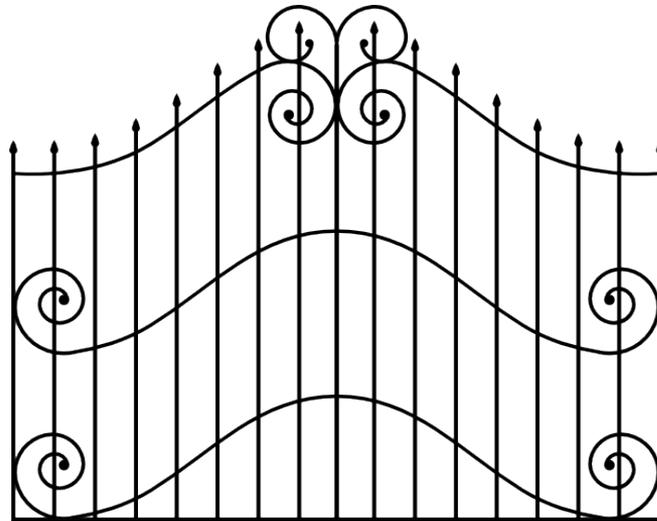
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# Background

- The Washington Supreme Court decided the case of *In re D.W.*, related to the detention of involuntary psychiatric patients, on August 7, 2014.
- “Psychiatric boarding” is usually defined as holding admitted psychiatric patients in hallways or other emergency department areas until inpatient beds become available.
- Single bed certification is a process used by the state of Washington to temporarily authorize treatment of a detained psychiatric patient in a facility not certified for involuntary treatment purposes.

# A Review of Involuntary Detention

- Designated Mental Health Professionals (DMHPs) are the gatekeepers of the mental health involuntary treatment system.
- DMHPs evaluate persons for detention who have been initially detained for evaluation, and who are in the community.



# DMHP Evaluations for Persons in Initial Detention

- A person may be initially detained for DMHP evaluation in several ways:
  - Detention by peace officer to an emergency department or crisis triage facility.
    - Requires reasonable cause to believe that, based on a mental disorder, the person presents an imminent likelihood of serious harm or is in imminent danger due to grave disability.
    - DMHP evaluation must occur within 12 hours.
    - Examination by mental health professional must occur within 3 hours.
    - DMHPs may request for peace officer to initiate this form of detention based on information received indicating imminent likelihood of harm.

# DMHP Evaluations for Persons in Initial Detention, cont.

- Detention by hospital emergency department.
  - Person must refuse voluntary admission after being brought to facility.
  - Hospital must regard person, based on a mental disorder, to present an imminent likelihood of serious harm or to be in imminent danger due to grave disability.
  - DMHP evaluation must occur within 6 hours (12 hours for minors).
- Detention by voluntary inpatient psychiatric facility.
  - Applies to persons who request discharge from admission for voluntary psychiatric treatment.
  - Requires imminent likelihood of serious harm or grave disability.
  - DMHP evaluation must “ordinarily” occur by end of next judicial day.
- Detention by jail or prison authorities.
  - If requested, evaluation by DMHP for an inmate of prison or jail must occur within 72 hours before scheduled release (or 5-10 days before release for participants in the Offender Reentry Community Safety program).

# DMHP Evaluations for Persons in the Community

- DMHP evaluations also occur in a variety of community settings.
- Imminent danger is not required to initiate detention from a community setting.
  - If the danger of harm is not imminent, the DMHP must request an order for non-emergency detention from a superior court judge.
  - The judicial detention order must be based on probable cause, supported by declaration or sworn telephonic testimony.

## 72-Hour Detention Standard

- A DMHP may detain a person to an evaluation and treatment facility (E&T) for up to 72 hours, excluding weekends and holidays, if, following investigation, the DMHP finds:
  - As a result of a mental disorder, the person presents a likelihood of serious harm or is gravely disabled; and
  - The person has refused or failed to accept appropriate evaluation and treatment voluntarily.
- At the end of the 72-hour period, the detained person has the right to appear before a mental health commissioner or superior court judge for a probable cause hearing.

## Orders for Further Detention

- An E&T treating a detained person may petition the court to authorize further detention for treatment if the person will not accept voluntary treatment, and no less restrictive alternative is available.
- The court may authorize up to 14 days inpatient treatment based on probable cause.
  - Patient has right to counsel, confrontation, and other forms of due process.
- The court may subsequently authorize up to 90 or 180 days inpatient treatment based on clear and convincing evidence.
  - Only state hospitals are certified to provide inpatient treatment based upon 90- or 180-day orders.
  - Jury trial is available.

# What is an E&T Facility?

An E&T facility is an entity certified by DSHS that can provide emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons with a mental disorder.

Regulatory requirements include:

- Department of Health licensure;
- Regional support network or DSHS approval; and
- Completion of on-site compliance reviews.

# E&T Certification Standards

E&T facilities must meet standards related to:

- Administration
- Timely evaluations of detained persons
- Staff qualifications
- Notice of rights provided to involuntarily detained persons

# Single Bed Certification

- By administrative rule, DSHS may authorize 72-hour or 14-day detention of an adult at a facility not certified for involuntary treatment in situations in which:
  - The detained person requires services that are not available at a certified E&T facility; or
  - Detention at the non-certified facility would facilitate continuity of care for the detained person.
- Single bed certifications are sometimes used to extend the treatment of a patient in a community E&T after the entry of a 90- or 180-day inpatient treatment order.

## *In re D.W.*

- In 2013, 10 persons who were involuntarily detained for 72 hours in Pierce County challenged their commitment to hospital emergency rooms or local acute care hospitals.
- These patients were detained pursuant to DSHS-issued single bed certifications, outside of regularly certified E&T facilities.
- The trial court found the single bed certifications were requested to avoid overcrowding certified E&T facilities, and that the patients were not receiving “psychiatric or therapeutic care” for their mental illness.

## *In re D.W.*

- The mental health commissioner and the Pierce County Superior Court found that use of the single bed certification process to avoid overcrowding E&T facilities is unlawful.
- After accepting review, the Washington State Supreme Court affirmed the trial court, holding that neither the authorizing statute nor rule recognizes lack of room at a certified E&T facility as grounds for the issuance of a single bed certification.

## *In re D.W.*

- While not included in the court's holding, the Supreme Court added in a footnote that if agency rules did allow single bed certifications to be granted based solely on overcrowding, this might violate the intent of the Involuntary Treatment Act and the constitutional rights of patients.
- On September 4, 2014, the court granted a motion by the state to stay the issuance of its mandate in the case until December 26, 2014.