

Guidelines for DCRs conducting video Involuntary Treatment Act (ITA) evaluations

Legal rationale:

With the June 11 implementation of HB 2099 and SB 5720, Designated Crisis Responders (DCRs) are authorized to use video to conduct ITA evaluations for adults by video, provided that a licensed health care professional or “professional person” is present with person while being evaluated.

In response to the current public health emergency, the Health Care Authority released guidance on March 28, 2020 for conducting ITA investigations during the pandemic, stating that nothing in existing law prohibits the use of video for purposes of conducting evaluations for both emergent and non-emergent detentions prior to June 11, 2020. That guidance (available [here](#)) provides direction on how best to facilitate the use of video during this emergency period.

Thereafter, the Supreme Court of Washington issued two orders related to civil commitment proceedings during COVID-19 that support HCA’s position, stating:

Designated Crisis Responders (DCRs) will follow the guidance issued by the Washington State Health Care Authority for video evaluations under the ITA. For emergency detentions under RCW 71.05.153, DCRs shall conduct interviews in person whenever safe and feasible. Where an in person interview is not safe or feasible, the DCR may conduct an interview by secure video if the technology is available. Before initiating a change in practice to video evaluations, DCRs, in conjunction with their Behavioral Health Administrative Service Organization, should first consult with their prosecutors to ensure that the prosecutor will move forward with petitions generated through video evaluations. If the prosecutor is not willing to support video evaluations, it may not be an option for that county/region. For non-emergency detentions under RCW 71.05.150, DCRs may conduct the interview in person whenever safe or feasible, or

through secure video if the technology is available. In conducting an ITA evaluation by video, DCRs must ensure that a healthcare professional is present with the individual being evaluated if the DCR and facility together determine that presence is necessary. (See Order dated April 29, 2020, Re: Civil Commitment Proceedings, Number 25700-B-616 (3))

This guidance addresses both Video ITA evaluations under the Supreme Court order for the COVID-19 public health emergency and the implementation of HB 2099 and SB 5720 as they pertain to Video ITA evaluations. The Supreme Court order, HB 2099 and SB 5720 only apply to adults.

When HB 2099 and SB 5720 take effect on June 11, 2020, amending RCW 71.05.150 and RCW 71.05.153 the amended statutes conflict with the Supreme Court Order regarding conducting ITA evaluations by video. HCA recommends that DCR Offices and their BH ASOs consult with their local prosecutors to determine how they should proceed under these circumstances. Please note that this guidance will be replaced by an update to the DCR Protocols.

Guiding principle:

As per the HCA Guidance Document and the Washington Supreme Court Order referenced above, ITA evaluations conducted before June 11, 2020 should only be conducted by video when an in-person, face-to-face evaluation is not safe or feasible. After June 11, 2020, video may be used, but will be subject to various considerations discussed below. In implementing Video ITA Evaluations all actions should be taken to ensure that the individual’s due process rights are recognized and honored.

The use of video technology does not alter the legal timelines and content of involuntary treatment assessment, or change the obligations of the Designated Crisis Responder, but is intended to provide an additional resource to facilitate timely and efficient assessment of individuals.



Guidance for DCRs

Note: Individual DCR Offices may need to modify some of these guidelines based on their local court practices and their work processes with local hospitals and emergency facilities. Examples of regional variation would include timing of completing and serving paperwork, timing of securing collateral information, method of providing the individual with their rights and steps in serving the individual with their detention paperwork.

The Designated Crisis Responder office will work with facilities to incorporate video assessment in to regional practice, and develop protocols for each facility that address all the elements of the assessment to include paperwork, communication, collection of collateral information, and coordination of treatment for the client.

HB 2099 and SB 5720 do not provide for video ITA evaluations for minors. The HCA guidance document and the Supreme Court order only address RCW 71.05, so there can be no video ITA evaluations for minors.

- 1. Prosecutor coordination:** Consult with BH ASO and prosecutor's office to determine how the prosecutor wants to address the conflict between the amended RCW 71.05.150 and RCW 71.05.153 and the Supreme Court Order as to when a video ITA evaluation may be conducted and whether or not the presence of a licensed health care provider is required. HCA advises coordinating with local prosecutors to facilitate smooth implementation of the ITA evaluations conducted by video.
- 2. Determining when to conduct video ITA evaluations:** The Supreme Court Order states video ITA evaluations should only be conducted when an in-person evaluation is not safe or feasible. As of June 11, 2020, revised statute states that video ITA evaluations may be conducted for adults for both emergent and non-emergent detentions.

- 3. Coordinating out of region detentions:** When detaining to an E&T or SWMS facility outside of your region, verify with the destination facility which party will file the petition.
- 4. The licensed health care professional:** Under the Supreme Court Order, the DCR may consult with the facility to determine if the presence of a licensed health care professional or professional person is necessary for conducting the evaluation. As of June 11, 2020, the amended RCW 71.05.150 and RCW 71.05.153 will be in effect for adults, and the presence of a licensed health care professional or professional person is mandatory for video ITA evaluations. As mentioned above, consult with the local prosecutor office to determine how to address the current discrepancy between the statute and the Supreme Court Order.

“Professional Person” is defined under 71.05.020 to mean: a mental health professional, substance use disorder professional, a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

Licensed Health Care Professional is not defined in law. It includes, but is not limited to the professionals identified under the “professional person” definition. This includes those professions under the mental health professional and substance use disorder professional definitions, as well as the following DOH Licensure Types:

- Licensed mental health counselors, marriage and family therapists, and social workers
- Health Care Assistants
- Medical Assistants
- Licensed Practical Nurses
- Nursing Assistants

- Osteopaths
- Osteopathic Physicians' Assistants
- Licensed Psychologists
- Emergency Medical Services and Trauma Care workers

5. Role of the licensed health care professional or professional person: This individual would be responsible for:

- Remaining with the client when the DCR is conducting the evaluation.
- Facilitating the use of technology, namely verifying that the DCR is clearly visible and audible and that the audio/video communication is functioning correctly.
- Providing a phone if the client wishes to call an attorney.
- Serving physical copies of the paperwork, as directed by the DCR.
- Providing instructions to the ambulance crew, as directed by the DCR.

6. Settings for conducting video ITA evaluations: The Supreme Court order states that video may be used if the client is in a setting in which the assessment can be completed at the following types of facilities:

- Acute Care Hospital, including Emergency Departments
- Evaluation and Treatment Facility
- Secure Withdrawal Management and Stabilization Facility
- Crisis Stabilization Facility
- Crisis Triage Facility
- Jail/Correctional Facility with MHP and/or law enforcement present
- Detention Centers
- Community setting with MHP and/or law enforcement present

As of June 11, 2020, statute states video may be used in these settings, for adults, provided that there is a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview.


7. Extenuating circumstances: Prior to initiating the evaluation the DCR should consult with facility staff to verify that there are no extenuating circumstances which would preclude the use of video assessment. If there are extenuating circumstances, consult with facility staff to determine if those obstacles can be mitigated.

Examples:

- Need for interpretive services
- Client has visual limitations and cannot see the screen
- Client's presentation and symptoms are specifically related to technology, causing them fear and discomfort beyond distress resulting from a crisis situation

8. Physical space & connectivity: The location of the DCR when conducting video evaluations may vary. However, all locations should be situated so that the evaluation is as secure and confidential as possible. The DCR may be located in an office in the hospital or facility, the DCR office, or other type office. If the DCR conducts the evaluation from home, the network connection must be secure and encrypted and the DCR should attest to the fact that no other individuals can observe or potentially interrupt the evaluation.

9. Collateral information: Prior to commencing the evaluation, DCRs should



gather as much collateral information as possible. This will include history, recent events, and current presentation. Information from facility staff will be especially important as the DCR will not be physically present for the evaluation.

10. Conducting the evaluation/investigation:

- A. The DCR shall introduce themselves and read the client rights as usual.
- B. The DCR shall include in the documentation/petition that it is a video assessment and identify the assisting staff present with the client document the time rights were read and that a copy of the rights was provided to the client by the assisting staff, per usual practice.
- C. Proceed with the ITA evaluation. During the evaluation take into consideration the novelty and/or concerns of the individual experiencing this type of evaluation.
- D. Consultation with the ER medical professional, if required, regarding your decision to detain or not detain will need to happen over the phone or video. Document the conversation and any concerns voiced by the ER medical professional.


11. Locating an E&T or SWMS bed: Once the DCR has made the decision to detain, the DCR should begin calling facilities, per usual practice. DCRs may request that the assisting staff fax the DCR the labs and any medical documentation/information that would be provided in the normal course of placing a detained individual so that the DCR can send the information to potential facilities for screening. Keep the assisting staff apprised of progress in finding a facility willing to accept the client.

12. Final steps:

- A. If detaining the individual, complete your paperwork, sign, date and finalize. Fax it to the facility so the assisting staff can physically serve the client. Ensure that the documentation clearly states the circumstances and details of the video assessment, *including identifying the facility professional who assisted.*
 - a. Coordinate with the assisting staff to facilitate a second, brief video session to virtually serve the client.
 - b. If detaining due to risk of harm to self/others/property, the DCR reads the client the DCR Notification of Suspension of Firearm Rights over video.
- B. If not detaining the individual, coordinate with the assisting staff to let them know the outcome of the decision and develop a plan to hand-off the client for an appropriate less restrictive alternative, crisis follow-up service, return to family, etc.

Guidance for DCR coordination with assisting facility staff

- A. The DCR is responsible for assisting facility staff so that the facility staff can understand paperwork and documentation requirements according to the outcome of the evaluation. If a client is being detained the client will need to be served a copy of the detention paperwork. There may be additional facility requirements depending on location of placement and it is the responsibility of the DCR to work with facility staff to ensure that all involved get the needed paperwork. This may include instructing facility staff to provide copies of paperwork to secure



transport providers and preparing copies for the destination facility.

- B. If the client is being recommended for voluntary hospitalization, the hospital and DCR will follow their regular procedures.
- C. If the client does not meet criteria for detention and the DCR recommends a less restrictive options in the community or in another setting, the hospital and DCR will follow their regular procedure for such cases.
- D. If the client meets criteria for detention, and they are staying at the hospital on a Single Bed Certification, the DCR (or hospital staff) will complete the form as usual, fax to the state hospital, then a copy will be included along with the detention paperwork.
- E. If the client meets criteria for detention, but there is no bed available, consult with the attending physician by phone, to discuss risk factors and a plan. The DCR will complete the No Bed Report as usual.