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DESIGNATED CRISIS RESPONDERS & INVOLUNTARY TREATMENT ACT IN WASHINGTON STATE

RCW 71.05 AND RCW 71.34

Presented by
Laura Pippin, MSP, MHP, SUDPT, SCC,
DCR Co-President WADCR Association

November 3, 2025,
Presentation for SURSAC

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TOPICS COVERED

- Involuntary Treatment Act (ITA) process in Washington state and the role of Designated Crisis Responders (DCR)
- Initial ITA hold/detention vs. commitment
- Substance Disorder vs. Mental Health Initial ITA Detentions
- Less Restrictive Alternative (LRA) options in Washington state

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DESIGNATED CRISIS RESPONDERS IN WASHINGTON STATE

- Designated crisis responders (DCRs) must possess a Master's degree and Department of Health credential.
- DCRs must receive specialized training in high risk suicide/homicide assessments, Washington state RCWs for Involuntary Treatment, and civil conversion.
- Awareness of outpatient treatment services for less restrictive, and forensic system statewide hospital treatment systems.
- DCRs are designated and provided with the authority to place an individual on an emergency behavioral health hold through the civil court system.

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EXPECTED EDUCATION/TRAINING

- Psychopathology and psychopharmacology
- Knowledge of individual and family dynamics, life span development, psychotherapy and family crisis intervention
- Crisis intervention and assessment of risk associated with both mental health disorders and substance use disorders, including suicide risk assessment and assessment of danger to others
- Assessment of grave disability, health and safety, cognitive and volitional functions
- Competency with special populations
- Substance use disorder
- Training in adolescent mental health issues

RCW 71.34.805

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ENRIQUE "RICKY" KLAUSMEYER-GARCIA,

- Ricky struggled with substance use disorder and was hospitalized multiple times for both mental health and substance use disorder.
- Ricky advocated for support for individuals with mental health and addictions in Washington State.
- Ricky ultimately passed away at age 37 in a residential substance use facility in Kirkland, Washington.

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RICKY'S LAW

- Ricky's Law, **House Bill 1713**, aligns Washington's substance use and mental health statutes addressing the way we deliver care to individuals.
- Involuntary commitment law for substance use
- When secure detoxification facility beds are not available, patients like Ricky ended up in emergency rooms, mental health facilities or even jail cells where they were not always able get the appropriate care.
- **The law**

  In 2016, **House Bill 1713** made changes to the behavioral health system and significantly amended RCW 71.05 and RCW 71.34 — effective April 1, 2018 — to include substance use in the ITA process.

  DCR's are now able to detain a person who meets the criteria for involuntary treatment due to a substance use disorder to a secure withdrawal management and stabilization facility **if there is space available.** – www.HCA.WA.gov

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WHEN TO MAKE A REFERRAL TO CRISIS

a) Something is happening that presents like a person may suffer from a **behavioral health disorder,** and

b) There is evidence that the person, as a result of a behavioral health disorder, presents a likelihood of serious harm to themselves, other persons, other's property, or the referred person may be gravely disabled, and

c) The referred person is unable or unwilling to seek appropriate treatment options

d) There will be a crisis system response in a least restrictive alternative dispatched first to meet the individual stated needs.

e) The legislative intent relays that the system must provide opportunities for individual if they are able to make choices for themselves if they are able

RCW 71.05.150(1), RCW 71.05.153(1) and RCW 71.34.710

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Voluntary Treatment/Safety Plan/Least Restrictive Options

- Will the individual agree to attend treatment voluntarily?

- Is there a safety plan that can be created to ensure safety?

- Less restrictive alternatives to detention
  - When considering whether to utilize alternatives to emergent detention, the DCR assesses whether those alternatives are reasonably available, and if voluntary, if individual is willing and able to accept those services and if environmental controls and supports are in place to reasonably ensure the safety of the individual and community.

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VOLUNTARY TREATMENT

The lack of a voluntary bed is not grounds for involuntary detention.
[RCW 71.05.050]

No jail or state correctional facility may be considered a less restrictive alternative to detention.
[RCW 71.05.157(6)]

Voluntary placement is what we aim for. DCRs cannot detain based on the belief of “not a good faith voluntary.”

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WHY IS INVESTIGATION NECESSARY

- Individual is unable to state where they are, who they are, what date it is, why they are there
- Individual is Suicidal and or Homicidal
- A medical provider indicates severe dehydration as the individual refuses to participate in life saving medical treatment, states daughter is stealing from her.
- Law enforcement interaction that is diverted for potential behavioral health crisis

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COMPONENTS OF ITA INVESTIGATION

Medical Clearance is required for inpatient facility placement

Face-to-Face Evaluation:

- Reading of Rights
- Mental Status Exam
- Least Restrictive Options including but not limited to Safety Planning or Voluntary Treatment

Collateral Information Gathering

Reasonable available history review

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COMPONENTS OF THE ITA INVESTIGATION

- Collateral Information Gathering
- Referral Acceptance
- Credible Witnesses
- Written Documentation and Records
- Copies of Mental Health Directives, Guardianship Paperwork, Power of Attorney
- Crisis Plans and Treatment Plans

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MEDICAL CLEARANCE

- It is best practice that a medical screening be conducted and that the individual is able to be medically discharged from the medical hospital and/or emergency department prior to referral to a DCR.
- Medical assessment and clearance are the determination of the treating physician and include multiple factors, of which intoxication is one.
- Labs to rule out medical conditions. Mental status exam
- *If the individual has ongoing medical problems, facilities can decline to accept, and the Medical Hospital will determine continued course of treatment.*

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ITA HOLD (INDIVIDUAL HELD DURING INVESTIGATION)

- The Involuntary Treatment Act process may be initiated for **individuals 13 years and older** within the state of Washington.
- An individual is typically referred by family members, first responders, caregivers, medical providers, or care providers for an ITA investigation/evaluation.
- The referrals for ITA investigation arise from concerns regarding an individual's safety, history, and presentation of mental disorder or substance use disorder symptoms.

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GATHERING INFORMATION

Consideration of information and records

Types of information to gather:

- Forensic evaluations under RCW 10.77, with or without a recommendation for evaluation for civil commitment
- Historical behavior, including history of one or more violent acts
- Prior detentions & commitments
- Risk assessments and/or discharge summaries from the Department of Corrections (DOC)
- Crisis plan & mental health advance directive
- Other available treatment records (for both mental health and substance use treatment)
- Criminal history records
- Prior civil commitments
- Medical records or EDI information
- Any information collected in a prior evaluations documenting cultural considerations

RCW 71.05.212

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COLLATERAL INFORMATION GATHERING/ AVAILABLE HISTORY REVIEW

- Principles of trauma informed care
- Individual's age, developmental, and cognitive functioning
- Culture and ethnicity
- Language spoken and communication
- History of diagnosis, treatment, and periods of recovery
- The duration, frequency, and intensity of any behavioral health symptoms
- Any medical conditions or diagnosis

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INTERVIEWING WITNESSES

Interview reasonably available, potentially credible witnesses who may have pertinent information – (family members, landlords, neighbors or others with significant contact or history of involvement with the individual).

Interview professionals and other treatment providers, including Tribal providers and IHCPs ~ Provider limitations due to 42 cfr, Part 2

If the evaluation takes place in an emergency room, the DCR must consider the observations and opinions of an examining emergency room physician, ARNP, or physician assistant when making a determination regarding detention. This consideration must be in consultation with the professional, or a review of their notes. The DCR must document this consultation, or the reason for lack of consultation, both in the petition and in case documentation.

RCW 71.05.154

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READING RIGHTS

This is an opportunity for the DCR to explain the legal process simply and clearly, to include a description of the DCR's role and responsibilities, inpatient facilities, and a brief explanation of timelines and court process.

If the individual chooses to remain silent or requests an attorney, the DCR is obligated to stop the interview. However, the DCR is **not obligated to stop the investigation**.

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READING OF RIGHTS MUST INCLUDE:

- DCR must identify self by name and position
- Inform the individual of the purpose and possible consequences of the investigation
- Inform the individual that they have the right to **remain silent**
- Inform the individual that any statement made may be used against them
- Inform the individual being investigated that they may speak immediately with an attorney
- Inform the individual that if they are detained as harm to self, others or property, their right to possess a **firearm will be suspended** for six months

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MENTAL STATUS EXAM

To evaluate the presence of a mental disorder or substances used disorder:

- Behavior
- Judgement
- Presentation
- Orientation
- Memory
- Thought process
- Affect
- Impulse control

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DETERMINING THE PRESENCE OF A BEHAVIORAL HEALTH DISORDER

A formal diagnosis of a behavioral health disorder is not required to establish a mental, emotional or organic impairment, but only that the disorder has a substantial adverse effect on cognitive or volitional functioning

The DCR reviews all information regarding symptoms and presentation gathered from the face-to-face evaluation, collateral sources, and any history and documentation available regarding past diagnosis, treatment, and intervention

Use of the DSM-5 framework for substance use disorder: this framework and criteria can be used to establish the presence of a substance use disorder for the purposes of a petition for detention

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DETERMINING THE PRESENCE OF A SUBSTANCE USE DISORDER

1. Substance is taken in larger amounts, or over a longer period than was intended.
2. Persistent desire or unsuccessful attempts to cut down or control use of the substance.
3. Great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.
4. Craving, or a strong desire or urge to use the substance.
5. Recurrent use of the substance despite having persistent or recurrent social or interpersonal problems caused its use.
6. Important social, occupational, or recreational activities are given up or reduced because of use of the substance.
7. Recurrent use of the substance in situations in which it is physically hazardous.
8. Substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem
9. Tolerance
10. Withdrawal

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DETERMINING IMMINENT DANGER

The DCR assesses the available information to determine whether or not, as a result of the behavioral health disorder, there is a danger to the individual, to others, the property of others, or the individual is gravely disabled, and if so, if it is imminent.

Is the individual at risk?

Does this risk result from a behavioral health disorder?

<u>The DCR makes this assessment:</u>

- Using their professional judgment
- Based on an evaluation of the individual, review of reasonably available history and interviews of any witnesses
- Consistent with statutory and other legally determined criteria

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DETERMINING DANGER TO SELF OR OTHERS

"**Likelihood of serious harm**" means a substantial risk that:

- Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
- Physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm;
- Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or
- Individual has threatened the physical safety of another and has a history of one or more violent acts

RCW 71.05.020(36)

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GRAVE DISABILITY

"**Gravely disabled**" means a condition resulting from a mental disorder, in which the person:

- Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety RCW 71.05.020(24)(a); or
- Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety

RCW 71.05.020(24)(b)

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ITA DETENTION (120 HOURS)

- An individual detained for substance use disorder may be detained **ONLY** to a Secure Withdrawal and Management Stabilization (SWMS) facility.
- An individual detained for mental disorder may be detained to an Evaluation and Treatment (E&T) facility.

A facility may be dually credentialed. (2 facilities state dual credentials)

- Individuals may be treated and stabilized at these licensed facilities for up to 120 hours, excluding weekends and holidays, for further evaluation and treatment.
- There must be a release after the initial 120 hours, unless the treatment team determines that the individual is still at risk and petitions the court.

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THE FACILITY AND COURT PETITION FOR A 14-, 90- AND 180-DAY COMMITMENT

- Inpatient facilities file for subsequent Civil Commitment based upon medical necessity and ITA criteria as specified in RCWs.
- If the individual does not stabilize within the 14-day commitment, the facility may petition the court, who may then order a 90-day commitment. At this stage, the individual has a right to a jury trial.
- Subsequent petitions for continued treatment may be filed. These orders are for 180-day commitments.
- An individual may be transitioned to a long-term community bed or a state hospital bed when a 90/180-day commitment is ordered by the court

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"YOU MUST LEARN A NEW WAY TO THINK BEFORE YOU CAN MASTER A NEW WAY TO BE" -MARIANNE WILLIAMSON

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Laura Pippin, MSP, MHP, SUDPT, SCC,
DCR Co-President WADCR Association

iamlaural@yahoo.com

(360)953-7059

November 3, 2025
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