

March 30, 2018

**TO:** Judicial Community and Legal Community

**FROM:** Merrie Gough, Sr. Legal Analyst

**RE:** Updates to the 71.05 RCW Involuntary Civil Commitment Orders

The Washington Pattern Forms Committee updated the 71.05 RCW Involuntary Civil Commitment Orders to implement changes that went into effect April 1, 2018. The changes are based upon Ricky Garcia’s Act, Laws of 2016 ch. 29 (E3SHB 1713) and ESSB 6491, and recommended changes.

The table below includes detailed descriptions of the changes:

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| **MP 001** | **Notice of Ineligibility to Possess a Firearm**  After “**Submit to**: Dept. of Licensing, Business & Professions Firearms Unit, insert “[firearms@dol.wa.gov](mailto:firearms@dol.wa.gov)” and put parentheses around the P.O. Box address. |
| **MP 401** | **Petition for Initial Detention**  This is a new form. |
| **MP 410** | **Findings, Conclusions, and Order Committing Respondent for Involuntary Treatment or Less Restrictive Treatment ~~(14-day, 90-day LRA)~~**  Change the title of the forms as indicted by the underline in the above title.  In the bottom right of the caption, add the following:  “Clerk’s Action Required: para 15 (MI)”  Move the existing and new docket codes, and the LRA/AOTL expiration date to a table immediately below the caption. The table is as follows:   |  | | --- | | **Mental Illness**  **Substance Use Disorder**  14-day commitment (ORDT14)  14-day commitment (ORDT14S)  90-day LRA (ORDL90)  90-day LRA (ORDL90S)  90-day AOT (AOTL90)  90-day AOT (AOTL90S) | | **LRA/AOTL** Expires on . |   Throughout the form change “Designated Mental Health Professional” and “DMHP” to “Designated Crisis Responder” and “DCR.”  Below the heading “**Hearing**,” in the sentence beginning with “The court…,” add a colon after “the.”  Also below the sentence after “**Hearing**,” change the original text and add new check boxes as follows:  “ Petition for 14 days of involuntary treatment OR 90 days of less restrictive alternative treatment.  Petition for assisted outpatient behavioral health treatment.”  Below “At the hearing:,” in the first and third check boxes, delete the check box options for “appeared by video.”  In paragraph “**2. Findings of Fact**,” insert the following parenthetical phrase after the heading “**Firearm Notice.**”  (Not applicable for substance use disorder treatment.)  At the end of the last sentence in the same paragraph, insert:  “…as the result of a mental disorder.”  In paragraph “**3. Reasons for Commitment**,”change the first two sentences as follows:  “Petitioner has proven by a preponderance of the evidence that Respondent suffers from a  substance use disorder  mental disorder. The diagnosis is:…”  In the same paragraph in the line beginning with “As a result…,” delete “mental” as follows:  “…As a result of that ~~mental~~ disorder…”  After that line and before the check box option beginning with “There is a substantial risk…” insert the following new sub-heading:  “**Likelihood of harm or gravely disabled:**”  In the same paragraph, immediately above the forth main check box option, add the new sub-heading:  “**In need of assisted outpatient behavioral health treatment:**”  and change the text as follows:  “ Respondent:     * has been committed by a court to detention for involuntary ~~mental~~ behavioral health treatment ~~at least twice~~ during the preceding thirty-six months (excluding confinement as a result of a criminal conviction);   ~~OR,~~  ~~is currently committed for involuntary mental health treatment, and the Respondent has been committed to detention for involuntary mental health treatment at least once during the thirty-six months preceding the date of initial detention of the current commitment cycle (excluding confinement as a result of a criminal conviction);~~  ~~AND,~~   * ~~Respondent~~ is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, ~~in view of the person's treatment history or current behavior;~~ based on a history of nonadherence with treatment or in view of the person’s current behavior. * ~~Respondent is unlikely to survive safely in the community without supervision;~~ * ~~Respondent~~ is likely to benefit from less restrictive alternative treatment; and * ~~Respondent~~ requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the Respondent presenting a likelihood of serious harm or the Respondent becoming gravely disabled within a reasonably short period of time.”   In paragraph “**5. Voluntary Treatment**,” change the check box for “Good Faith Voluntary,” as follows:  **Good Faith Voluntary**: The parties addressed the issue. ~~Respondent has raised the affirmative defense of being a good faith voluntary patient~~. Respondent is not willing or able in good faith to consent to voluntary treatment:  Add the following as the new paragraph 6:  **6. Adequate space for Respondent’s substance use disorder treatment.**  A secure detox facility with adequate space for the respondent  is available  is not available  An approved substance use disorder treatment program with adequate space for the respondent  is available  is not available.  Renumber the remaining paragraphs.  In paragraph 10, change the title and first sentence as follows:  “**~~Detention c~~Criteria**. The Petitioner established by a preponderance of the evidence that the Respondent:”  In the same paragraph, in the third check box, change “mental health treatment” to “behavioral health treatment.”  In paragraph “**11. Involuntary Treatment** as follows:,” change the first check box option as follows:  **“14-Day Commitment. ~~Inpatient Treatment~~.** The Respondent is detained for a period not to exceed 14 days of intensive inpatient treatment at:  Inpatient mental health treatment at:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Secure detox facility at:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Approved substance use treatment program at:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Other: “  Change the second check box option about “**Less Restrictive Treatment**” by adding a new check box heading:  **Less Restrictive Treatment** as follows:  Indent and change the check box for 90 Day Less Restrictive Alternative Treatment and add a new check box option for 90 Day Assisted Outpatient Behavioral Health Treatment as follows:  **90 Day Less Restrictive Alternative Treatment.** The Respondent is released to less restrictive alternative treatment (LRA) for up to 90 days:  For  mental health treatment  substance use disorder treatment  **90 Day Assisted Outpatient Behavioral Health Treatment**. The Respondent is released for assisted outpatient treatment on a less restrictive alternative (AOTL) for up to 90 days:  For  mental health treatment  substance use disorder treatment  **LRA/AOT services and conditions:**  *(name)* is the ~~mental~~behavioral health service provider responsible for identifying the services the Respondent will receive in accordance with RCW 71.05.585.  “The following treatment conditions or other conditions are in the best interest of the respondent and others:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  .“  Also in paragraph 11, below the paragraph about “**Violation and Hospitalization**,” delete the information about revocation in parentheses and replace it with:  “*(If the current less restrictive alternative is solely based on the respondent being in need of assisted outpatient behavioral health treatment then revocation proceedings are under 71.05.590(6)).”*  In paragraph “**15.** **Firearms Possession Prohibited**,” immediately after the heading, insert:  “(Not applicable for substance use disorder treatment):”  In paragraph “**16. Notice to Department of Corrections**,” change the first sentence as follows:  **“**If Respondent is, or becomes, subject to supervision by the department of corrections, Respondent must notify the treatment provider and Respondent’s mental health treatment information and substance use disorder treatment information must be shared with the department of corrections for the duration of the Respondent's incarceration and supervision, under RCW 71.05.445. ” |
| **MP 420** | **Findings, Conclusions, and Order Committing Respondent for Involuntary Treatment Or Less Restrictive Treatment ~~(90-day, 180-day, 90-day LRA, 180-day LRA, 1-year LRA)~~**  Change the title of the forms as indicted by the underline in the above title.  In the bottom right of the caption, change the clerk’s action as follows:  “Clerk’s Action Required: para. 13 (MI), 15”  Move the existing and new docket codes, and the LRA/AOTL expiration date to a table immediately below the caption. The table is as follows:   |  | | --- | | **Mental Illness**  **Substance Use Disorder**  90-day commitment (ORDT90)  90-day commitment (ORDT90S)  180-day commitment (ORDT180)  180-day commitment (ORDT18S)  90-day LRA (ORDL90)  90-day LRA (ORDL90S)  180-day LRA (ORDL180)  180-day LRA (ORDL18S)  One-year LRA (ORDL1Y)  One-year LRA (ORDL1YS)  90-day AOT (AOTL90)  90-day AOT (AOTL90S)  180-day AOT (AOTL180)  180-day AOT (AOTL18S) | | **LRA/AOTL Expires** on . |   Throughout the form change “Designated Mental Health Professional” and “DMHP” to “Designated Crisis Responder” and “DCR.”  Below the heading “**Hearing**,” in the sentence beginning with “The court…,” add a colon after “the.”  Also below the sentence after “**Hearing**,” change the original text and add new check boxes as follows:  “ Petition for  **90 Days**  **180 Days**  **1 Year** of involuntary treatment:.  Petition for assisted outpatient behavioral health treatment.”  Below “At the hearing:,” in the first and third check boxes, delete the check box options for “appeared by video.”  In paragraph “**1. Reason/s for Commitment**,”change the first two sentences as follows:  “Petitioner has proven by clear, cogent and convincing evidence that Respondent suffers from a  substance use disorder  mental disorder. The diagnosis is:…  In paragraph 1, change the beginning of the second main check box option as follows:  “As a result of that  substance use disorder  mental disorder (*check the boxes that apply and write facts in support, below*):”  In paragraph 1, the second check box option for “Gravely Disabled…,” change the second sub-check box option as follows:  “manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over actions, is not receiving such care as is essential for health and safety; harmful consequences will follow if involuntary treatment is not ordered and the Respondent, due to a severe deterioration of mental functioning is unable to make a rational decision regarding the need for treatment.”  Also in paragraph 1, change the check box option for “In need of…outpatient treatment…,” as follows:  “In need of assisted outpatient behavioral health treatment. Respondent:     * has been committed by a court to detention for involuntary ~~menta~~l behavioral health treatment ~~at least twice~~ during the preceding thirty-six months (excluding confinement as a result of a criminal conviction).   ~~OR~~  ~~is currently committed for involuntary mental health treatment, and the Respondent has been committed to detention for involuntary mental health treatment at least once during the thirty-six months preceding the date of initial detention of the current commitment cycle (excluding confinement as a result of a criminal conviction).~~  ~~AND,~~   * ~~Respondent~~ is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, ~~in view of the person's treatment history or current behavior;~~ based on an history of nonadhereance with treatment or in view of the Respondent’s current behavior. * ~~Respondent is unlikely to survive safely in the community without supervision;~~ * ~~Respondent~~ is likely to benefit from less restrictive alternative treatment; and * ~~Respondent~~ requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the Respondent presenting a likelihood of serious harm or the Respondent becoming gravely disabled within a reasonably short period of time.”   Also in paragraph 1, after the lines for “*Facts in support:*,” add the following new check box option:  An approved substance use disorder treatment program with adequate space for Respondent  is available  is not available.  Finally, add a check box before the paragraph beginning with “Respondent is being discharged…”  In paragraph 7, change the heading and first sentence as follows:  **~~Detention c~~Criteria**. The Petitioner established by ~~a preponderance of the evidence~~ clear, cogent, and convincing evidence that the Respondent:  Also in paragraph 7, in the last check box option, change “mental” to “behavioral.”  In paragraph 9, change the check box option for “Inpatient Treatment…” from:  **Inpatient Treatment.** The court orders  **90 Days**  **180 Days** of intensive inpatient treatment. Respondent is remanded into the custody of DSHS or to a facility certified by DSHS:        To:  **Inpatient Treatment.** The court orders  **90 Days**  **180 Days**  of intensive inpatient treatment. Respondent is remanded into the custody of: DSHS or to a facility certified by DSHS.  **Inpatient** **Mental Health Treatment at:**    **Substance Use Disorder Treatment Program at:**      Also in paragraph 9, change the check box option for “Less Restrictive Alternative Treatment,” as indicated below:  Add a new check box as follows:  **Less Restrictive Treatment** as follows:  Below the new heading, indent and change the check box option for “Less Restrictive Alternative Treatment” and add a new check box option for “Assisted Outpatient Behavioral Health Treatment as follows:  **Less Restrictive Alternative Treatment.** The Respondent is released to less restrictive alternative treatment (LRA) for:  **90 Days**  **180 Days**  **1 Year**  For  mental health treatment  substance use disorder treatment  **Assisted Outpatient Behavioral Health Treatment.** The Respondent is released for assisted outpatient treatment on a less restrictive alternative (AOTL) for  **90 Days**  **180 Days**  **1 Year**  For  mental health treatment  substance use disorder treatment  **LRA/AOT services and conditions:**  *(name)* is the ~~menta~~l behavioral health service provider responsible for identifying the services the Respondent will receive in accordance with RCW 71.05.585.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name) is the approved substance use disorder treatment program that will provide treatment.  Respondent must cooperate with the treatment recommendations by the ~~mental~~ behavioral health service provider.  Also in paragraph 9, below the paragraph beginning with “**Violation and Hospitalization**,” delete the note in parentheses and replace it with:  “*(If the current less restrictive alternative is solely based on the respondent being in need of assisted outpatient behavioral health treatment then revocation proceedings are under 71.05.590(6)).”*  In paragraph 11, change “Jurisdiction” to “Concurrent Jurisdiction.”  In paragraph “**13.** **Firearms Possession Prohibited**,” immediately after the heading, insert:  “(Not applicable for substance use disorder treatment):”  In paragraph “**14.** **Notice to Department of Corrections**,” change the first sentence as follows:  **“**If Respondent is, or becomes, subject to supervision by the department of corrections, Respondent must notify the treatment provider and Respondent’s mental health treatment information and substance use disorder treatment information must be shared with the department of corrections for the duration of the Respondent's incarceration and supervision, under RCW 71.05.445…” |
| **MP 441** | **Order of Continuance**  In the caption in the check boxes for “Type of hearing:,” after the check box for “1-Year,” insert a check box for “AOT” before the check box for “Revocation.”  On page 1, below “for a continuance, and,” in the first and third check box options, delete the sub-check box for “appeared by video.”  On page 2, after “**The court orders** that the,” and after the check box for “1 year,” insert “AOT” as the next check box.” Also, after the hearing date “A.M/P.M.,” delete “or as soon as it can reasonably be heard.”  In the section titled “**Escape and Recapture.**,” change “Designated Mental Health Professional” to “Designated Crisis Responder.”  In the second to last check box option, after the line in which to write the next hearing location, delete the instruction “(court address).” |
| **MP 445** | **Order Setting Trial Date and Committing Adult for Involuntary Treatment Pending Trial**  Below “**Hearing**,” change the first line as follows:  A petition for:  **90 Days**  **180 Days**  **1 Year** of involuntary treatment  Assisted Outpatient Behavioral Health Treatment  has been filed in this  mental ~~illness~~ disorder  substance use disorder proceeding. Petitioner requested an order setting trial date and continuing the treatment of the Respondent during this proceeding.  After “At the hearing:,” in the first and third check box options, delete the sub-box for “appeared by video.”  In paragraph 3, in the paragraph beginning with “**Violation and Hospitalization.**,” change “Designated Mental Health Professional” to “Designated Crisis Responder.”  Below that paragraph, delete the information in parentheses about revocation proceedings and replace it with:  “*(If the current less restrictive alternative is solely based on the respondent being in need of assisted outpatient behavioral health treatment then revocation proceedings are under 71.05.590(6)).”* |
| **MP460** | **Order Revoking Less Restrictive Alternative Treatment/Conditional Release**  Below **Hearing**, change “revocation petition” to “revocation petition/motion.”  Below “At the hearing:,” in the first and third check box options, delete the sub-check box for “appeared by video.”  In paragraph 1, immediately below the check box option for “**Waiver of Hearing.**,” insert a new check box option as follows:  **LRA Based on Felony Charges, Likelihood of Harm, Gravely Disabled:**  Below that check box, indent the four check box options that begin with:  **Violation of Order**;  **Substantial Deterioration of Functioning**;  **Substantial Decompensation**; and  **Likelihood of Serious Harm**.  Then, insert the following new check box option in line with the box for “Waiver of Hearing”:  “ **LRA Based On Assisted Outpatient Behavioral Health Treatment.** As a result of a mental disorder or substance use disorder:”  Below that check box, indent and insert the following two check box options:  **Likelihood of Serious Harm.** Respondent poses a likelihood of serious harm.  **Grave Disability.** Respondent is gravely disabled.  Also in paragraph 1, (moved from its own paragraph 2 into paragraph 1) change the section beginning with “**Treatment.**,” as follows:  **Treatment.** After considering less restrictive alternatives to involuntary detention and treatment, no such alternatives are in the best interests of the Respondent or others.There areno viable modifications to the less restrictive alternative treatment order that are in the best interests of the Respondent or others. The best interests of the Respondent and others would be served if the Respondent were committed for inpatient treatment.  Insert the following new paragraph 2:   1. **Adequate space for Respondent’s substance use disorder treatment.**   A secure detox facility with adequate space for the respondent  is available  is not available.  An approved substance use disorder treatment program with adequate space for the respondent  is available  is not available.  Change paragraph 7 as follows:  **Remand and Commitment.~~to the Custody of Hospital.~~** ~~The respondent is remanded to the custody of~~ Respondent is remanded into the custody of DSHS or to a facility certified by DSHS for commitment:  Inpatient mental health treatment at:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Secure detox facility at:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Approved substance use treatment program at:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Other  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  In paragraph 7, in the section titled “**Escape and Recapture**,” change “Designated Mental health Professional” to “Designated Crisis Responder.” |