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Washington State
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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Detention of: B.B., STATE OF WASHINGTON, Respondent, v. B.B., Appellant.	No. 60185-1-II PUBLISHED OPINION

PRICE, A.C.J. — In 2023, B.B. was arrested for theft of a motor vehicle. However, due to a behavioral health disorder, B.B. was not competent to stand trial and competence could not be restored. In August 2024, Snohomish County Superior Court dismissed the theft of a motor vehicle charge against B.B. Because B.B. had been receiving competency restoration services at Western State Hospital (WSH), the Snohomish County Superior Court authorized an additional 72 hours of commitment so that B.B. could be evaluated for civil commitment. Forty-four minutes after the initial 72-hour commitment order expired, WSH filed a petition for civil commitment. B.B. moved for dismissal of the petition because of this 44-minute gap, but the superior court denied the motion, granted WSH's petition, and ordered B.B. to be involuntarily committed.

B.B. appeals the superior court's involuntary commitment order, arguing that it was error to deny his motion to dismiss. B.B. contends that consistent with the holdings of our Supreme Court, dismissal of his case was mandatory. According to B.B., any delay, however small, between

the expiration of the initial commitment order and the filing of WSH's petition results in a total disregard of the Involuntary Treatment Act (ITA),[1] which in turn requires dismissal.

Considering our Supreme Court's comments in context, we do not agree that our Supreme Court has created such a bright-line, unequivocal rule that would dictate dismissal in this case. Accordingly, we affirm the superior court.

FACTS

In February 2023, B.B. stole a work van from an Everett hospital. B.B. was charged with one count of theft of a motor vehicle. After ordering a competency evaluation, the Snohomish County Superior Court found B.B. incompetent to stand trial and ordered competency restoration services. After two unsuccessful restoration periods at WSH, the Snohomish County Superior Court found that B.B.'s competence could not be restored and dismissed the felony charge of theft of a motor vehicle in August 2024. The superior court ordered an additional 72 hours commitment at WSH so that B.B. could be evaluated for civil commitment. The order stated that the 72-hour period did not include Saturday, Sunday, or legal holidays, and would begin upon WSH's "receipt of the court order." Clerk's Papers (CP) at 2.

On Monday, August 19, 2024, at 12:14 p.m., Meesha Sidhu, M.D., and Lauren Smith, PhD, practitioners at WSH, filed a petition for 180-days of involuntary treatment in Pierce County Superior Court. The petition alleged that B.B. was gravely disabled and presented a substantial likelihood of repeating similar acts as the felony charges that had been dismissed. The petition also alleged that B.B. was not ready to be released to a less restrictive alternative placement.

[1] Ch. 71.05 RCW.

B.B. filed a motion to dismiss the petition because the petition was filed after the expiration of the court-ordered evaluation period. B.B. alleged that the 72-hour evaluation period ordered by the Snohomish County Superior Court expired on August 19 at 11:30 a.m. and the petition was untimely filed at 12:14 p.m.[2]

The State responded that the petition should not be dismissed. The State supported its motion with Dr. Smith's declaration. Dr. Smith explained that as an evaluator at WSH, she attempted to meet with B.B. for an evaluation twice during the 72-hour timeframe for evaluation, on August 16 and August 19. On both occasions, B.B. refused to meet with Dr. Smith, insisting that he had already been evaluated and was being illegally detained. Because Dr. Smith was unable to evaluate B.B., she filed the petition based on information gathered from other sources.

A superior court commissioner denied the motion to dismiss. Specifically, the commissioner found that the petition was "about 40 minutes" late and ruled that the late petition was not a complete disregard of the ITA because the delay was so short:

> The court denies respondent's motion to dismiss—the court finds [the] total disregard standard does apply and though the petition was filed about 40 minutes after the 72 hours expired, given the totality of the circumstances, the court does not find the slightly late filing to be a total disregard per statute and relevant case law.

Suppl. CP at 300.

[2] Nothing in the record definitively establishes what time WSH received the Snohomish County Superior Court order. However, all parties appear to agree that the order expired at 11:30 a.m. on August 19. The superior court found that the delay was about 40 minutes, which is consistent with the representations of the parties that the petition was filed 44 minutes after the initial commitment. B.B. does not challenge the superior court's finding that the delay was about 40 minutes. Unchallenged findings of fact are verities on appeal. *In re Det. of L.S.*, 23 Wn. App. 2d 672, 686, 517 P.3d 490 (2022).

After the hearing on the petition, another superior court commissioner found that B.B. was gravely disabled and that a less restrictive alternative was not in B.B.'s best interests. The commissioner ordered 90 days' commitment.

B.B. filed a motion to revise both the order denying the motion to dismiss and the order committing B.B., which was denied by the superior court. B.B. appeals.

ANALYSIS

B.B. argues that the superior court erred by denying his motion to dismiss because the Snohomish County Superior Court's commitment order had expired at the time the commitment petition was filed. Based on the language used by our Supreme Court in *In re Detention of A.C.*[3] and the companion case, *In re Detention of D.H.*,[4] B.B. asserts that the superior courts no longer have discretion to determine whether dismissal is appropriate once a commitment order has expired. We disagree.

We review questions of law de novo. *A.C.*, 1 Wn.3d at 739. Whether the trial court properly applied the law to a set of disputed facts is reviewed for an abuse of discretion. *Id.* "Discretion is abused if, among other things, it is exercised on untenable grounds, such as a misunderstanding of the law." *Id.* at 740.

The ITA specifically provides a preference for deciding the merits of a petition, unless the requirements of the ITA have been "totally disregarded":

> When construing the requirements of this chapter the court must focus on the merits of the petition, except where requirements have been totally disregarded, as provided in *In re C.W.*, 147 Wn.2d 259, 281 (2002). A presumption in favor of deciding petitions on their merits furthers both public and private interests because

[3] 1 Wn.3d 731, 533 P.3d 81 (2023).

[4] 1 Wn.3d 764, 533 P.3d 97 (2023).

> the mental and physical well-being of individuals as well as public safety may be implicated by the decision to release an individual and discontinue his or her treatment.

RCW 71.05.010(2).

I. THE ITA TOTAL DISREGARD STANDARD APPLIES

As an initial matter, B.B. argues that the superior court erred by applying the ITA total disregard standard because the Snohomish County Superior Court's initial commitment order was not issued under the ITA but, instead, was issued under chapter 10.77 RCW, which governs the criminally insane. B.B. asserts that "[b]ecause he was not detained under the ITA, there was no presumption to hear the late-filed civil commitment petition on the merits." Br. of Appellant at 10.

We agree that B.B. was detained at WSH under RCW 10.77.645(7).[5] But that does not mean that his motion to dismiss is not governed by the ITA. RCW 10.77.645(7) directly references the ITA, instructing that the purpose of the detention is for evaluation for the purposes of "filing a

[5] RCW 10.77.645(7)(a) states, in part:

> [I]f the . . . court finds that the defendant is incompetent to stand trial, the court shall dismiss the charges without prejudice and order the defendant to be committed to the department for placement in a facility operated or contracted by the department for . . . up to 72 hours if the defendant engaged in inpatient competency restoration services starting from admission to the facility, excluding Saturdays, Sundays, and holidays, for evaluation for the purpose of filing a civil commitment petition under chapter 71.05 RCW. If at the time the order to dismiss the charges without prejudice is entered by the court the defendant is already in a facility operated or contracted by the department, the 72-hour . . . period shall instead begin upon department receipt of the court order.

The statute in effect at the time of B.B.'s detention was former RCW 10.77.086 (2024) which was recodified as RCW 10.77.645. Because there were no substantive changes to the statute, we cite to the current version.

civil commitment petition under chapter 71.05 RCW." RCW 10.77.645(7)(a). Further, the State here filed its petition for civil commitment under the ITA through RCW 71.05.290(3), not chapter 10.77 RCW.[6] The petition that B.B. sought to have dismissed was clearly a petition for civil commitment governed by the ITA. Thus, when we address whether an ITA petition is dismissed, we use the ITA's standards, regardless of whether the initial detention originated under chapter 10.77 RCW.

B.B. disputes this conclusion by arguing that RCW 10.77.645(7) is the statute that determines whether he was unlawfully detained. We agree that the question of *whether* B.B. was unlawfully detained is governed by RCW 10.77.645(7). And here the finding that the 72-hours authorized by RCW 10.77.645(7) had expired 44 minutes before WSH filed its petition for civil commitment is unchallenged. But just because chapter 10.77 RCW provides a standard for determining whether B.B. was unlawfully detained, it does not follow that it governs the determination of the remedy—i.e., whether that unlawful detention warrants dismissal of an ITA petition for civil commitment. That standard is found in the ITA itself—RCW 71.05.010(2). Accordingly, we apply the ITA and related case law to determine whether the superior court abused its discretion by denying B.B.'s motion to dismiss the State's petition for civil commitment.

[6] RCW 71.05.290(3) states,

> If a person has been determined to be incompetent pursuant to RCW 10.77.645(7), then the professional person in charge of the treatment facility or his or her professional designee or the designated crisis responder may directly file a petition for 180-day treatment under RCW 71.05.280(3), or for 90-day treatment under RCW 71.05.280(1), (2), or (4). No petition for initial detention or 14-day detention is required before such a petition may be filed.

II. DISMISSAL WAS NOT REQUIRED UNDER THE ITA

As noted above, the ITA specifically provides a preference for deciding the merits of a petition, unless the requirements of the ITA have been totally disregarded:

> When construing the requirements of this chapter the court must focus on the merits of the petition, *except where requirements have been totally disregarded*, as provided in *In re C.W.*, 147 Wn.2d 259, 281 (2002). A presumption in favor of deciding petitions on their merits furthers both public and private interests because the mental and physical well-being of individuals as well as public safety may be implicated by the decision to release an individual and discontinue his or her treatment.

RCW 71.05.010(2) (emphasis added). When the requirements of the ITA have been totally disregarded, the required remedy is dismissal. *A.C.*, 1 Wn.3d at 736-37; *D.H.*, 1 Wn.3d at 767.

B.B. argues that under this total disregard standard, dismissal was required because our Supreme Court has unequivocally held that *any* unlawful detention is a total disregard of the ITA. According to B.B.'s reading of *A.C.* and *D.H.*, "[c]ourts and the State have no flexibility here," and there is no longer discretion on whether any detention that exceeds the duration of the authorization, regardless of circumstances, is a total disregard of the ITA—it always is. Reply Br. at 9.

With this absolute rule, B.B. asserts that the delay between the expiration of his 72-hour detention and the filing of WSH's petition means that the petition *must* be dismissed. In other words, the 44-minute delay, minimal as it may be, is dispositive.[7]

[7] In addition to arguing that the State totally disregarded the ITA by unlawfully detaining him, B.B. claims that the State totally disregarded the ITA by failing to meaningfully evaluate whether it should file a civil commitment petition. This claim is waived. To the extent, B.B. is arguing that the State totally disregarded the ITA by failing to evaluate him, this argument was explicitly abandoned at the superior court. *See* VRP (Sept. 16, 2024) at 4 ("[W]e will not be pursuing that aspect of our motion to dismiss. . . ."). To the extent that B.B. is arguing that the State's

For the reasons explained below, we disagree that the Supreme Court, in addressing very different factual circumstances, created such an unequivocal rule that utterly deprives the courts of pragmatic discretion in ITA cases. Seen in context, our Supreme Court's jurisprudence still provides the opportunity, in the appropriate case, for the careful balancing of numerous significant interests including the right to liberty, the need for effective treatment, and the protection of public safety.

To begin, we recognize that in *A.C.*, our Supreme Court stated "that the requirements of the ITA have been totally disregarded when a person is involuntarily detained without legal authority under the act," and "[c]ontinuing to involuntarily detain [patients] after the orders expired was without authority of law." *A.C.*, 1 Wn.3d at 745-46; *see also D.H.*, 1 Wn.3d at 777. Reading these statements in isolation would support B.B.'s position.

However, such a reading ignores the factual context in which those statements were made, the Supreme Court's own definition of total disregard, the precedent our Supreme Court recognized as the basis of the legislature's codification of the total disregard standard, and the legislative intent behind the ITA and the total disregard standard (as that intent has been explained by our Supreme Court).

First, the factual context of the Supreme Court cases cited by B.B., the opinions of *A.C.* and *D.H.*, are significantly different from B.B.'s case. N.G. and C.M., two patients whose cases were consolidated with A.C., were detained in WSH under 180-day civil commitment orders. *A.C.*, 1 Wn.3d at 736. Both orders were allowed to expire without WSH filing new petitions for

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deliberative process when filing the motion was insufficient, that argument was never raised at the trial court at all. Both arguments are raised for the first time on appeal. RAP 2.5(a). Thus, we decline to consider his claim.

civil commitment. *Id.* at 736-37. N.G.'s order expired because of a problem with WSH's computer databases; C.M.'s order expired because WSH attempted to file a new petition that was never actually filed due to problems with WSH's email. *Id.* at 737. N.G. and C.M. were both improperly detained in WSH for an extensive period, more than a month before the expired orders were discovered. *Id.* at 736-37. Then, rather than address these errors, WSH merely attempted to restart the clock by initiating new commitment proceedings and having N.G. and C.M. evaluated by a designated crisis-responder for a 72-hour detention and 14-day petition for involuntary treatment. *Id.* at 737.

In *D.H.*, the companion case, D.H. was placed on a 72-hour detention in one facility. 1 Wn.3d at 768. The designated crisis responder chose not to file an involuntary treatment petition because D.H. expressed willingness to engage in voluntary treatment. *Id.* But when D.H. was transferred to a second treatment facility, he began asking to leave. *Id.* at 769. The treatment providers apparently believed that they had to let the initial 72-detention expire, but that they could then begin the process over again with a new 72-hour detention, which they did the next morning. *Id.*

In all three of these cases, our Supreme Court held that the ITA had been totally disregarded when the patients were unlawfully detained without the authority of any court order. *A.C.*, 1 Wn.3d at 747; *D.H.*, 1 Wn.3d at 778-79. And when WSH merely initiated a new ITA proceeding to evade the expiration of the authority for the detention, the prior error was compounded. *A.C.*, 1 Wn.3d at 747; *D.H.*, 1 Wn.3d at 780. As the court said in *D.H.*, "It is unacceptable and constitutes a total disregard of the ITA to intentionally allow the statutory time limit to expire and keep someone

overnight against their will and without authority under the ITA in order to then file a new petition on the same grounds." 1 Wn.3d at 767.

It was within this factual context that our Supreme Court made its statements "that the requirements of the ITA have been totally disregarded when a person is involuntarily detained without legal authority under the act," and "[c]ontinuing to involuntarily detain [patients] after the orders expired was without authority of law." *A.C.*, 1 Wn.3d at 745-46; *see also D.H.*, 1 Wn.3d at 777.

This case shares few similarities with *A.C.* and *D.H.* In sharp contrast to C.M., N.G. (both detained for over a month before WSH initiated new 72-hour detentions), and D.H. (intentionally detained overnight before treatment facility initiated a new 72-hour detention), B.B. was detained for merely 44 minutes, less than an hour past the expiration of the order. And, significantly, WSH did not attempt to restart the clock by initiating a new ITA proceeding, but it continued with the procedurally appropriate mechanism in this case, filing a petition for civil commitment under RCW 71.05.290(3).

B.B.'s case is much more similar to other cases in which some procedural delay that led to an unauthorized detention was not considered a total disregard of the ITA, specifically, *In re Detention of Swanson*, 115 Wn.2d 21, 804 P.2d 1 (1990) and *In re Detention of C.W.*, 147 Wn.2d 259, 53 P.3d 979 (2002). *D.H.*, 1 Wn.3d at 775.

In *Swanson*, the patient was at the court waiting for his hearing to be called when the authorization for his 72-hour detention expired. Although the order was in place at the start of the court's *calendar*, the order had expired before the actual *hearing* on the matter. *Id.* at 25. In fact, the 72-hour ITA hold had expired 20 minutes prior to the hearing. *Id.* After an extensive

discussion of the difficulties and unpredictability of mental health court calendars, the court concluded that dismissal was not appropriate notwithstanding the expiration of the authorization,

> If [the hospital] had totally disregarded the requirements of the statute or had failed to establish legal grounds for Swanson's commitment, certainly dismissal would have been proper. Indeed, it would have been required. However, if the intent of the statute is to be fulfilled and absurd results are to be avoided, dismissal cannot turn on the vagaries of scheduling, especially in these unpredictable and sensitive proceedings.

Id. at 31.

And in *C.W.*, the court addressed, among other issues, whether dismissal was an appropriate remedy for a violation of RCW 71.05.050 (which requires that, when a patient is admitted to an emergency room and referred for evaluation for detention, the evaluation must take place within six hours of the referral). 147 Wn.2d at 279-83. When discussing the appropriate remedy, the *C.W*. court recognized that "*Swanson* does seem to suggest that in determining whether a case is to be dismissed, courts should focus on the merits of the petition, the intent of the statute, and whether the State 'totally disregarded the requirements of the statute.' " *Id.* at 281 (quoting *Swanson*, 115 Wn.2d at 31). The court also determined that "the purpose of the statute as well as the presumption in favor of deciding cases on the merits tends to weigh against dismissing all cases in which [the statute] is violated." *Id.* at 283. Therefore, the court limited dismissal as the remedy to only cases "where the professional staff totally disregarded the statutory requirements . . . ." *Id.*

Swanson and *C.W.* were the cases that established the total disregard standard that was codified by the legislature in RCW 71.05.010(2).[8] And both cases recognize that the practicalities of managing mental health cases may at times result in minor delays. These delays, though perhaps technical violations of the ITA requirements, do not, according to these cases, override the important considerations of treatment and safety that support the presumption of deciding cases on the merits.

Following this precedent, dismissal was not warranted in B.B.'s case. Here, the delay was minimal, a mere 44 minutes, and WSH filed a procedurally appropriate petition to ensure timely judicial review of B.B.'s commitment.

Moreover, the definition of total disregard created by *A.C.* and *D.H.* after the consideration of this precedent actually does not support dismissal in this case. Notwithstanding the isolating language B.B. relies on, those decisions prefaced their discussion of dismissal, like the *Swanson* and *C.W.* decisions before them, by recognizing that it can be difficult in some cases to determine whether the requirements of the ITA have been "totally disregarded," especially because the legislature did not define the term. *A.C.*, 1 Wn.3d at 745; *D.H.*, 1 Wn.3d at 776. In both *D.H.* and *A.C.*, the court relied on dictionary definitions and an analogy to the crime of negligent homicide

[8] As noted above, our legislature directly referenced the *C.W.* opinion in the statutory language of RCW 71.05.010(2) ("When construing the requirements of this chapter the court must focus on the merits of the petition, except where requirements have been totally disregarded, as provided in *In re C.W.*, 147 Wn.2d 259, 281 (2002).").

to establish a definition.[9] *D.H.*, 1 Wn.3d at 777; *A.C.*, 1 Wn.3d at 745. And in *D.H.*, the court held that "total disregard is not a mere oversight but amounts to a complete failure to treat the ITA with respect or attention." *D.H.*, 1 Wn.3d at 777.

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[9] In *A.C.*, the court explained,

> "Totally" is defined in *Merriam-Webster* as "in a total manner **:** to a total or complete degree." MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/totally (last visited June 16, 2023). "Disregard" is defined as "to pay no attention to **:** treat as unworthy of regard or notice" and as "the act of treating someone or something as unworthy of regard or notice **:** the state of being disregarded." MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/disregard (last visited June 16, 2023). In the admittedly very different context of negligent homicide, we observed that
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> > disregard . . . implies an aggravated kind of negligence or carelessness, falling short of recklessness but constituting a more serious dereliction than the hundreds of minor oversights and inadvertences encompassed within the term "negligence." Every violation of a positive statute, from a defective taillight to an in inaudible horn may constitute negligence under the motor vehicle statutes, yet be unintentional, committed without knowledge, and amount to no more than oversight or inadvertence but would probably not sustain a conviction of negligent homicide. To drive with disregard for the safety of others, consequently, is a greater and more marked dereliction than ordinary negligence. It does not include the many minor inadvertences and oversights which might well be deemed ordinary negligence under the statutes.

1 Wn.3d at 744-45 (quoting *State v. Eike*, 72 Wn.2d 760, 765-66, 435 P.2d 680 (1967)). And in *D.H.*, the court explained,

> "Disregard" means "to treat without fitting respect or attention," "to treat as unworthy of regard or notice," and "to give no thought to **:** pay no attention." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 655 (2002). Whereas "totally" means, "in a total manner **:** COMPLETELY, WHOLLY." *Id.* at 2415. Analogizing to the "admittedly very different context of negligent homicide," our companion case recognizes that we have held, " 'To drive with disregard for the safety of others, consequently, is a greater and more marked dereliction than ordinary negligence. It does not include the many minor inadvertences and oversights which might well be deemed ordinary negligence under the statutes.' "

When we apply this definition of total disregard here, we conclude that the superior court did not abuse its discretion in denying B.B.'s motion to dismiss in this case. As noted above, the delays here were minimal, less than 45 minutes. B.B.'s history shows an extensive criminal history in addition to multiple civil commitments and mental health contacts, and this particular evaluation followed the dismissal of felony criminal charges. Moreover, WSH clearly understood the importance of the evaluation period as shown by Dr. Smith's two attempts to evaluate B.B. during the short evaluation period, including the morning the petition was due to be filed, but B.B. refused to participate. Finally, there is nothing in the record that establishes that the late filing of the petition was rooted in administrative malfeasance or systemic neglect; this appears to be, if anything, nothing but a "mere oversight." *D.H.*, 1 Wn.3d at 777. Under these circumstances, we cannot see how the petitioner's late filing demonstrated a complete failure to treat the ITA with respect or attention.

Finally, our legislature has infused the ITA with competing considerations.[10] And very few, if any, of these considerations are served by insisting that B.B.'s petition be dismissed rather

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> *A.C.*, 1 Wn.3d at 754 (quoting *State v. Eike*, 72 Wn.2d 760, 765-66, 435 P.2d 680 (1967)).

1 Wn.3d at 777.

[10] The legislature's statement of intent for the ITA provides,

> The provisions of this chapter apply to persons who are eighteen years of age or older and are intended by the legislature:
>
> (a) To protect the health and safety of persons suffering from behavioral health disorders and to protect public safety through use of the parens patriae and police powers of the state;

than reviewed on merits. In *A.C.*, our Supreme Court recognized that the legislature's statement of intent for the ITA, as well as the addition of RCW 71.05.010(2) "highlights the tension between the constitutional requirement that liberty not be taken without due process of law, the rights of those involuntarily detained under the ITA to appropriate treatment, and the fact that our involuntary mental health system has been consistently overwhelmed and legal requirements regularly disregarded." 1 Wn.3d at 743. It is contrary to the intent of the ITA (and its attempt to govern the confluence of these difficult, and often contradictory, interests) to *require* dismissal where there has been any delay or breach of the many timing requirements of the ITA, regardless of the circumstances or length of the delay.

This case aptly illustrates this point. B.B. was found to be incompetent to stand trial on felony criminal charges and had not been successfully restored to competence despite competency restoration services. Dismissing the civil commitment petition in these circumstances would have not only public safety concerns, but also prevents B.B. from being provided appropriate treatment and disrupting the continuity of his care. *See* RCW 71.05.010 (1)(a), (c), (e).

> (b) To prevent inappropriate, indefinite commitment of persons living with behavioral health disorders and to eliminate legal disabilities that arise from such commitment;
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> (c) To provide prompt evaluation and timely and appropriate treatment of persons with serious behavioral health disorders;
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> (d) To safeguard individual rights;
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> (e) To provide continuity of care for persons with serious behavioral health disorders;
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> (f) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures; and
>
> (g) To encourage, whenever appropriate, that services be provided within the community.

RCW 71.05.010(1).

CONCLUSION

We appreciate, as pointed out by our Supreme Court, that "our involuntary mental health system has been consistently overwhelmed and legal requirements regularly disregarded." *A.C.*, 1 Wn.3d at 743. And in such cases of systemic neglect, like those involving N.G., C.M., and D.H., there is a total disregard of the ITA and dismissal is the appropriate remedy. However, the circumstances in this case are not consistent with those cases, and dismissal here would not be consistent with the ITA's definition of total disregard, once the full context of our Supreme Court's cases are considered.

Under the narrow facts present here, the superior court did not abuse its discretion by denying B.B.'s motion to dismiss the petition for civil commitment. We affirm.

PRICE, A.C.J.

We concur:

GLASGOW, J.

CHE, J.