
## COVERING CASES PUBLISHED IN JULY 2023

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Cases in the Law Enforcement Digest are briefly summarized, with emphasis placed on how the rulings may affect Washington law enforcement officers or influence future investigations and charges. Each month's Law Enforcement Digest covers court rulings issued by some or all of the following courts:

- **Washington Courts of Appeals**. The Washington Court of Appeals is the intermediate level appellate court for the state of Washington. The court is divided into three divisions. Division I is based in Seattle, Division II is based in Tacoma, and Division III is based in Spokane.
- **Washington State Supreme Court**. The Washington Supreme Court is the highest court in the judiciary of the U.S. state of Washington. The court is composed of a chief justice and eight justices. Members of the court are elected to six-year terms.
- **Federal Ninth Circuit Court of Appeals.** Headquartered in San Francisco, California, the United States Court of Appeals for the Ninth Circuit (in case citations, 9th Cir.) is a federal court of appeals that has appellate jurisdiction over the district courts in the western states, including Washington, Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada and Oregon.
- **United States Supreme Court:** The Supreme Court of the United States is the highest court in the federal judiciary of the United States of America.

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## WASHINGTON LEGAL UPDATES

The following training publications are authored by Washington State legal experts and available for additional caselaw review:

- Legal Update for WA Law Enforcement authored by retired Assistant Attorney General, John Wasberg
- **Caselaw Update** - WA Association of Prosecuting Attorneys [2018-2021] | [2022]

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- If you have questions/issues relating to using the ACADIS portal, please review the FAQ site.
- Send Technical Questions to lms@cjtc.wa.gov or use our Support Portal.
- Questions about this training? Linda J. Hiemer, JD| Program Administration Manager Legal Education Consultant/Trainer | linda.hiemer@cjtc.wa.gov

The materials contained in this course are for training purposes. All officers should consult their department legal advisor for guidance and policy as it relates to their particular agency.

Background History

# Involuntary Treatment Act (ITA)

The Involuntary Treatment Act (ITA) provides the statutory framework for civil investigation, evaluation, detention, and commitment of individuals experiencing a mental disorder or a substance use disorder whose symptoms are so acute that the individual may need to be treated on an involuntary basis in an Evaluation and Treatment facility (E&T) or Secure Withdrawal Management and Stabilization facility (SWMS).

ITA governs the actions of Designated Crisis Responders (DCRs), law enforcement, health care providers, and the court process in terms of:

- Conducting investigations and evaluations to determine if an individual meets criteria for emergent or non-emergent involuntary detention and treatment;
- Writing petitions so that the court may order an involuntary commitment;
- Testifying in court proceedings;
- Monitoring compliance for individuals who have been released from commitment under a Less Restrictive Alternative order.

The Involuntary Treatment Act process may be initiated for anyone within the state of Washington. An individual is typically referred by family members, first responders, care givers, medical providers, and care providers for an ITA investigation/evaluation. The referrals for ITA investigation to a designated crisis responders (DCR) arise from concerns regarding an individual's safety, history, and presentation of mental disorder or substance use disorder symptoms. An ITA investigation includes examining alleged facts through reasonably available information, records, and witnesses. An ITA evaluation consists of an interview with the individual to determine if symptoms of the individual's mental disorder or substance use disorder places the individual at risk due to the likelihood of serious harm, and/or grave disability. ITA evaluations are often conducted in hospital emergency departments, or outreach into the community.

## Terminology

***Designated crisis responder*** means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in the ITA.

***Grave disability*** means that due to the individual's mental disorder or substance use disorder, the individual is in danger of serious harm resulting from a failure to provide for their essential needs of health and safety; or demonstrates a severe deterioration in routine functioning evidenced by

increasing loss of volitional control over their actions and is not currently receiving care that is essential for the individual's health and safety.

***Likelihood of serious harm*** means a substantial risk that physical harm will be self-inflicted, inflicted upon another, or inflicted upon the property of others. This includes threats or attempts to commit suicide or harm oneself, or behavior that causes harm or places another person of reasonable fear that they will be harmed, or behavior that caused substantial loss or damage to the property of others.

## Treatment

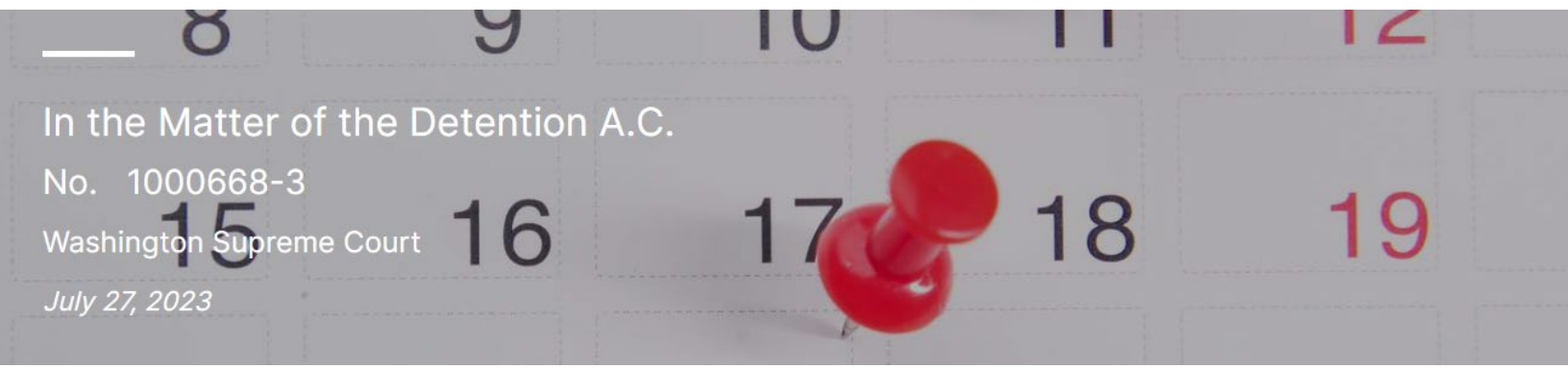
After the petition is written and the individual is served with the petition, the individual is taken into custody and transported to the licensed facility that accepted the individual for treatment. Typically, the accepting facility requires that the individual has been medically screened to ensure that the individual does not have any medical treatment needs which are beyond the scope of the treating facility. An individual detained for mental disorder may be detained to an E&T facility. An individual detained for substance use disorder may be detained to a SWMS facility. A facility may be dually credentialed as both an E&T facility and SWMS facility. The individual may be treated and stabilized at the licensed facility for up to 120 hours, excluding weekends and holidays, for further evaluation and treatment.

The individual must be released after the initial 120 hours, unless the treatment team determines that the individual is still at risk and petitions the court. The court conducts a hearing to determine if a 14-day commitment will be ordered for additional treatment. The individual has the right to legal representation through this process. The intent of the court process is to balance the individual's constitutional rights with individual and community safety.

If the individual does not stabilize within the 14-day commitment, the facility may petition the court, who may order a 90-day commitment, and the individual will be transitioned to a long-term community bed or a state hospital bed.

NOTE: The ITA discussed herein applies to adults. The RCW addressing behavioral health services for minors (age 13-17) can be found at: Chapter 71.34 RCW: BEHAVIORAL HEALTH SERVICES FOR MINORS (wa.gov) and is beyond the scope of this LED.

This content retrieved from: fact-sheet-involuntary-treatment-act-2022.pdf (wa.gov)




TOPIC: Involuntary Treatment Act (ITA)

# Factual Background

This case involved three patients: NG, CM, and AC, who were involuntarily detained under the Involuntary Treatment Act (ITA) codified here Chapter 71.05 RCW: BEHAVIORAL HEALTH DISORDERS (wa.gov). NG and CM had both been involuntarily detained at Western State Hospital ("WSH") on court orders authorizing the State to hold them for up to 180 days. AC was held on a court order directing she be involuntarily detained at Telecare North Sound Evaluation and Treatment Center ("TNS") for 14 days.

### NG and CM's Detentions

The court order authorizing NG's involuntary detention expired in December 2019. WSH continued to hold NG without an authorizing court order for more than a month after the order expired. A witness later testified that the order was allowed to expire, at least in part, because the State failed to properly manage and maintain computer databases.

Problems at WSH persisted, and six months later, the court order authorizing the State to involuntarily detain CM expired. As with NG, WSH continued to hold CM without an authorizing court order for more than a month after the order expired. The record suggests that staff had timely prepared a petition for another 180 days of involuntary detention but had failed to file it with the court due to a problem with their email. Once staff at WSH noticed that the orders authorizing NG's and CM's involuntarily detentions had expired, they started the ITA procedures over.

NG and CM were examined by the **designated crisis responders** ("DCRs") as if the initial emergency procedures of the ITA applied. Based on their evaluations, the DCRs placed NG and CM in emergency custody. Shortly afterward, WSH filed new ITA petitions in court to detain NG and CM for 14 days.

At their first court hearings under the new petitions, NG and CM each moved to dismiss on the grounds that the ITA's requirements had been **totally disregarded**. In NG's case, the State successfully argued that the legislature would not have intended dismissal as the appropriate remedy given how **gravely disabled** she was. In CM's case, the State unsuccessfully argued that the legislature intended money damages under RCW 71.05.510,1 not dismissal, as a penalty for violation of the ITA. A Pierce County commissioner granted CM's motion to dismiss but denied NG's motion to dismiss.

NG appealed both the denial of her motion to dismiss and the order granting the State's ITA petition. The State appealed the Pierce County commissioner's grant of CM's motion to dismiss. NG's and CM's cases were consolidated on appeal and heard by the Court of Appeals, Division II, which proposed a new rule and remanded back to the lower court.

**AC's Detention**

While CM's and NG's cases were pending, AC was involuntarily detained under the ITA for 14 days at the TNS. AC formally invoked her right not to be medicated 24 hours before her next court hearing. Despite her invocation of her right, AC was involuntarily medicated the day before the hearing. Once the court realized that AC had been involuntarily medicated, it continued the hearing for 24 hours, extended her detention, and directed that AC not be involuntarily medicated before the continued hearing.

AC moved to dismiss the ITA petition on the grounds the treatment center violated the ITA. The court denied the motion, concluding that the State's failure to comply with the statute was outweighed by the State's interest. AC appealed denial of her motion to dismiss. The Court of Appeals, Division I affirmed the lower court's decision.

AC, NG, and CM all sought review from the Supreme Court of Washington (the "Court"), which was granted. The cases for AC, NG, and CM were consolidated.

# Analysis of the Court

First, the Court had to decide when and whether dismissal was the required remedy when the ITA has been violated. Second, it had to determine whether the trial courts properly applied the law in these cases. While the parties framed their arguments around the statutory requirements of the ITA, the Court was mindful that those statutory requirements are rooted in our common law and constitutions. It recognized that "involuntary commitment for mental disorders constitutes a significant deprivation of liberty that requires due process protections." It added that "the State's lawful power to hold those not charged or convicted of a crime is strictly limited." The State may not take a person's liberty without according them due process of law. WASH. CONST. art. I, § 3.

Due process also requires regular judicial review to ensure the restrictions on liberty do not persist longer than necessary given the State's legitimate purposes. Involuntary detention under a civil commitment statute like the ITA is "constitutional only when both initial and continued confinement are predicated on the individual's mental abnormality and dangerousness," among other constitutional requirements. What process is due is shaped in part by the processes established by the legislature.

The legislative intent of the ITA is:

> (a) To protect the health and safety of persons suffering from behavioral health disorders and to protect public safety through use of . . . police powers of the state;

(b) To prevent inappropriate, indefinite commitment of persons living with behavioral health disorders and to eliminate legal disabilities that arise from such commitment;

(c) To provide prompt evaluation and timely and appropriate treatment of persons with serious behavioral health disorders;

(d) To safeguard individual rights;

(e) To provide continuity of care for persons with serious behavioral health disorders;

(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.

Under both RCW 71.05.010 and case precedent, the State may not **totally disregard** the requirements of the ITA when involuntarily detaining a person. The Court noted that in some cases, it will be difficult to determine whether the requirements of the ITA have been totally disregarded. Neither "totally" nor "disregarded" is defined in the ITA. When a word within a statute is not defined within the statute or the related Chapter, courts are permitted to look to sources outside the statute. In this case, the Court applied the dictionary definitions of the words "totally" and "to disregard."

"Totally" is defined in Merriam-Webster as "in a total manner: to a total or complete degree." "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."

Taken together, the Court concluded that the requirements of the ITA are "totally disregarded" when a person is involuntarily detained without legal authority under the ITA. The court clarified that the requirements of the ITA are not totally disregarded in every case where some aspect of the act has been violated. But the orders giving the State legal authority to involuntarily detain NG and CM had expired.

Consequently, continuing to involuntarily detain them after the orders expired was without authority of law. The ITA itself mandates release in such circumstances. Most relevantly, the ITA provides in part: "No person committed under this section may be detained unless a valid order of commitment is in effect" and "no order of commitment under this section may exceed 180 days in length."

Plainly, the ITA requires patients shall be released once the court order authorizing their detention expires unless a judge enters a new civil commitment order that extends their involuntary detention. RCW 71.05.320(4). The Court determined that NG and CM should have been released before any new proceeding was initiated. It held that initiating new proceedings while the person is still involuntarily detained under an expired court order is not permitted by the ITA and is not a remedy for the total disregard of the ITA's requirements. The Court reasoned that any such action ignores the State's escalating burdens. The person must be released from custody into the community before a new evaluation is appropriate. Therefore, the Court ruled that the State totally disregarded the ITA when it held NG and CM for more than a month after the civil commitment orders authorizing their

involuntary detentions expired. Under these circumstances, filing a "new" petition for custody was merely an attempt to extend the existing custody that had long previously expired.

Similarly, the Court recognized that AC's rights under the ITA were plainly violated too. Staff at the E&T center violated her right to decline medication before a court hearing. The Court determined that this should not have happened, but it still needed to determine if dismissal was the appropriate remedy. AC contended that an ITA petition should be dismissed if the ITA, strictly construed, was not followed. But the Court reasoned that this approach would be at odds with both the ITA and Washington case law. As discussed in the matter of NG and CM earlier, the Court reiterated that the legislature has directed courts to focus on the merits of the petition unless the requirements of the ITA have been totally disregarded. RCW 71.05.010(2).

AC also argued that her due process and statutory rights were totally disregarded when she was forcibly medicated. But unlike NG and CM, AC was never held without authority of law. AC was brought before a judge on the appointed day. The court acted promptly to remedy, as much as possible, the violation of the ITA. In such a case, a court considering a motion to dismiss must consider the totality of the circumstances in determining whether the requirements of the act have been totally disregarded. In this case, given the relatively brief time AC was held, the fact she was brought before a judge on the appointed day, the fact the judge extended her detention, and her clear need for additional treatment, the Court ruled that the trial court did not abuse its discretion in denying the motion to dismiss.

The Court advised that "power must be exercised under law." Under the ITA, the State has the power, without prior judicial review, to briefly detain a patient for evaluation and treatment in emergency circumstances. RCW 71.05.150, .153. Once involuntarily detained, the patient must be afforded a lawyer and promptly brought before a judge to determine whether, based on a preponderance of the evidence, an additional 14 days of evaluation and treatment is required. RCW 71.05.240(4)(a). Once a patient has been involuntarily detained for 14 days, a court may authorize, after a hearing, and based on clear, cogent, and convincing evidence, an additional 90 or 180 days of civil commitment. RCW 71.05.310. Nevertheless, the Court determined that the State totally disregarded these requirements in NG's and CM's cases when they were each held for more than a month after the court orders authorizing their civil commitments expired. When the requirements of the ITA have been totally disregarded, the ITA petition must be dismissed. Therefore, the Court reversed the Court of Appeals in NG and CM. However, with regard to AC, the Court stressed that AC was never held without authority of law. She was at all times detained either under the emergency provisions of the ITA or by court order. Though the ITA was violated when AC was involuntarily medicated, she was not detained without authority of law.

# Training Takeaway

This case and the Brief History provide more detail and "behind the scenes" processes of the ITA than most LE need to know. However, mental health issues are increasing, and LE play an increasing role in

obtaining help for those in crisis. Regarding the ITA in particular, LE refer "invols" to Emergency Departments, who then, if deemed necessary, contact a DCR. Nevertheless, the Background History and the Court's decision demonstrate the serious challenges our communities face regarding mental health crises and substance use disorders (SUDs).

Similarly, the case demonstrates the strict scrutiny in which courts will review "invols" and any commitment extensions beyond the court ordered treatment periods (usually 120 hours, 14 days, 90 days, and 180 days). Courts balance an individual's rights against the rights of the community and the intent of the ITA.

> If you are interested in learning more about the ITA and LE best practices in handling "invols" or any Crisis Intervention Training (CIT), please see the CJTC Advanced Training Division Website CIT courses here: Crisis Intervention Team Training (wa.gov)

Finally, in its Notes to **RCW 71.05.455 Law enforcement referrals to behavioral health agencies—Reports of threatened or attempted suicide—Model policy**, the Legislature provided:

> The legislature finds that law enforcement officers may respond to situations in which an individual has threatened harm to himself or herself, but that individual does not meet the criteria to be taken into custody for an evaluation under the involuntary treatment act. In these situations, officers are encouraged to facilitate contact between the individual and a mental health professional in order to protect the individual and the community. While the legislature acknowledges that some law enforcement officers receive mental health training, law enforcement officers are not mental health professionals. It is the intent of the legislature that mental health incidents are addressed by mental health professionals.

See RCW 71.05.455: Law enforcement referrals to behavioral health agencies—Reports of threatened or attempted suicide—Model policy. (wa.gov)

## External Links

EXTERNAL LINK: View the Court Document

- Crisis Intervention Team Training
- HCA: The Involuntary Treatment Act (ITA)
- Chapter **71.05** RCW: BEHAVIORAL HEALTH DISORDERS
- RCW 7**1.05.455**: Law enforcement referrals to behavioral health agencies—Reports of threatened or attempted suicide—Model policy
- Chapter **71.34** RCW: BEHAVIORAL HEALTH SERVICES FOR MINORS