

14. The court recognizes that those detained pursuant to the involuntary treatment act, under RCW 71.05 and RCW 71.34, have lost their liberty based on a behavioral health condition (either mental health related or substance use related) and are uniquely situated from others whose liberty interest has been impacted by the current health crisis. These individuals are not being held pursuant to a violation of a criminal law, but rather due to a crisis that brings them under the ITA.

- a. Any designated crisis respondent (DCR) conducting an evaluation for an initial involuntary detention or for revocation of a least restrictive alternative (LRA) shall conduct the evaluation as soon as possible. The DCR shall make every effort for the person evaluated to remain in the community as emergency rooms are responding to this epidemic. Electronic evaluations may occur during the period of this order so long as the patient can be seen and heard: A trained employee of the facility where the evaluation is occurring must be present for the evaluation.
- b. If an individual is involuntarily detained, the facility holding the person shall provide telephonic access to an attorney and must explain that this pandemic may prevent in-person communication with the patient's counsel.
- c. The facility holding the involuntarily detained person shall provide video access for an attorney to meet with the patient to discuss any petitions for detention that have been filed and any upcoming court access. If video access is impossible to provide, the facility must provide telephonic access. Telephonic and video access must also be provided for patients who do not have an upcoming court hearing, but who desire to speak with an attorney. This access must allow for confidential communication with the attorney. If patient safety prevents staff separation from the patient for the purpose of talking with his or her attorney, the facility must inform the attorney that the communication is not confidential. Conversations cannot be recorded by facility staff nor shall any notes be taken or distributed about the conversation. The facility shall make every attempt to provide as much distance as possible. Facility preference is not a basis for not providing confidential access to an attorney. The conversation cannot be held where other patients can hear the patient's end of the conversation.
- d. All hearings conducted under the involuntary treatment act shall be conducted electronically, unless impossible. Every effort shall be made to set up video communications using existing technology or commonly available software designed for meetings between participants from multiple locations, Telephone hearings may be used only until workable video technology is established or when after exercising due diligence such technology cannot be effectively established. These hearings shall provide a means for the introduction of evidence that all parties may view or have previously seen. If all essential participants are unable to use video technology to participate in the hearing, then teleconferencing without video must be an available option. Essential participants are the court, attorneys, witnesses, patients, etc. It is critical to the court process, and to ensure the rights of the respondents pursuant to statute, that all respondents in ITA hearings have the ability to confer with counsel before and during court hearings. For all hearings conducted via video or teleconference, courts and facilities shall provide a means for the patient to have private and continued discussion with his or her attorney. For example, the patient may be able to observe and be observed by the court via video and have phone access with his or her attorney. The hearing will recess while the patient talk with his or her lawyer. While other witnesses are testifying, the patient's connection with the court shall be muted and shall only be unmuted if the patient wishes to testify or needs to respond to a question from the court The patient shall be separated from other testifying witnesses so that

testimony is not interrupted: a staff member of a facility should be present to assist the patient with the technology. For hearings under RCW 71.34, parents or guardians may be present with the patient only after the patient has the opportunity to discuss the issue with the assigned counsel. All hearings required to be public must be recorded, with the recording preserved for the record. Patient who do not wish to participate via video or teleconference must be accommodated by either continuance, trial setting , further attorney contact or some other means: the fact that the patient desires an in-person hearing cannot be used as a basis for commitment.

- e. Patients must be able to testify on their own behalf during these hearings if they so desire. Their hearing shall not be delayed because the patient wishes to testify: Courts shall accommodate the respondent's right to be present and testify on his or her own behalf.
- f. If an attorney must conduct an in person hearing or interview with a patient, the facility must make available disposable pens, gloves, masks, gowns, hand sanitizer and a clean table to conduct business. Every effort must be made to limit exposure of the patient, attorney and other patients in the hospital.
- g. If a patient elects to have a jury trial, that patient's right to a jury trial will be effective April 30, 2020, or to whatever date this order is extended. Those patients held pursuant to the involuntary treatment act under RCW 71.05 have the right to a jury trial within ten days and thus, their trial shall be given priority. ITA jury trials shall not be delayed to accommodate criminal trials: Liberty is no less important to an involuntarily detained individual.
- h. Courts must recognize that proceedings conducted by video and phone are difficult for all participants, especially those who are not trained in the law or do not regularly testify in ITA or criminal hearings. Before each hearing begins, courts must clearly explain how the hearing will occur. If a respondent does not understand the process, the court shall provide the opportunity to consult privately with counsel. Hearings shall not be terminated because of difficulty with a new procedure.
- i. All facilities shall continue to make every effort to release patients.
- j. Electronic filing shall be permitted on all filings. If the court does not have the current capability for electronic filing, they shall promptly designate an email address to which all documents shall be emailed for filing. The clerk of the court must establish time deadlines for which the document must be sent to be considered filed on a date certain. Additionally, opposing counsel shall be emailed any e-filed documents and the attorney for the facility and the respondent shall be emailed copies of any e-filed petitions.
- k. For purposes of the ITA, any hearing that may result in the patient's release from a facility within the next fourteen days shall be considered an emergency motion.