HOUSE BILL REPORT
ESHB 2761

As Passed House:
February 16, 1998

Title: An act relating to at-risk youth.

Brief Description: Revising provisions relating to at-risk youth.

Sponsors: By House Committee on Children & Family Services (originally sponsored by Representatives Carrell, Wolfe, B. Thomas, Cooke, Boldt, Smith, Gombosky, Talcott, D. Schmidt, D. Sommers, McDonald and Backlund).

Brief History:
Committee Activity:
Children & Family Services: 1/30/98, 2/6/98 [DPS].
Floor Activity:
Passed House: 2/16/98, 98-0.

HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Cooke, Chairman; Boldt, Vice Chairman; Bush, Vice Chairman; Kastama, Assistant Ranking Minority Member; Carrell; Gombosky; McDonald and Wolfe.

Minority Report: Do not pass. Signed by 3 members: Representatives Tokuda, Ranking Minority Member; Ballasiotes and Dickerson.

Staff: Douglas Ruth (786-7134).

Background: In 1995, the Legislature passed a comprehensive act dealing with runaway, truant, and at-risk youth. The act is commonly referred to as the Becca Bill. Part of the act dealt with parents' rights to seek chemical dependency and mental health treatment for their minor children. The Legislature intended to broaden parents' rights to seek professional help for their children without the necessity of a court proceeding.

The Washington State Supreme Court ruled, in *State v. CPC Fairfax Hospital*, 129 Wn2d 439 (1996), that the mental health treatment process set up by the Becca Bill allowed a child to be released from treatment upon his or her request, unless the parents filed a petition under the state's involuntary commitment procedures. The child who was the

subject of the *CPC Fairfax* case was not released upon her request, nor did her parents file a petition with the court. The court therefore ruled that the child's due process rights were violated. The court did not rule on the constitutionality of the ability of parents to seek treatment for their children.

In 1997, the Legislature passed ESSB 5082 in response to the court's ruling in *Fairfax*. The Governor vetoed the bill in its entirety citing due process and fiscal concerns.

A second part of the Becca Bill was the establishment of secure crisis residential centers for at-risk youth who have run away from home. The department was given the option to contract with private organizations to provide the CRCs. The selection and operation of the centers are regulated by many provisions of the bill. One regulation prohibits the placement of secure CRCs on the grounds of detention or corrections facilities unless there are no other practical locations for secure CRCs.

Similarly, the department was directed to establish staff-secure facilities for long-term placement of at-risk youth. The courts were authorized to order placement of youth at these facilities for treatment.

A third component of the 1995 Becca Bill provided parents court access to deal with issues relating to their children's behavior. Those petitions are known as "Children in Need of Special Services" (CHINS) and "At-Risk Youth" (ARY) petitions. Violations of court orders entered in response to CHINS and ARY petitions are punishable by contempt of court. Two recent appellate court decisions have limited the use of contempt in CHINS and ARY proceedings.

As a means of bringing at-risk youth under the Becca Bill, the bill also made harboring at-risk youth a crime. To be guilty of harboring, a person must fail to disclose the location of a runaway, prevent the release of the child to an officer, assist the runaway in avoiding an officer, or obstruct an officer in detaining a runaway. Harboring is punishable as a gross misdemeanor. The Becca Bill also required persons to report the whereabouts of runaway youth.

Summary of Bill: <u>COMMITMENT TO MENTAL HEALTH OR SUBSTANCE ABUSE TREATMENT</u>

The processes for the admission of a child to mental health or chemical dependency treatment are clarified by clearly separating the procedures for: (1) voluntary outpatient and inpatient treatment, (2) parent-initiated treatment, and (3) court-authorized involuntary treatment petitions.

Mental health and chemical dependency treatment of children is allowed, without the child's consent, when the decision is made by a medical professional at the request of a parent.

Admitting professionals may admit a child to treatment when the professional determines the treatment is medically necessary. The professional must be appropriately trained, as provided by rule, to conduct the evaluation. The evaluation must be completed within 24 hours unless the professional determines additional time is necessary. The child cannot be held longer than 72 hours without being admitted or discharged. During the evaluation period, the professional may only provide such treatment as necessary to stabilize the child's condition. The child must be provided with a statement of his or her rights within 72 hours of admission.

The independent review of the professional's decision to treat the child is made on the basis of whether the continued treatment is medically necessary, which is defined. The review must be conducted by a professional person and occurs between 7 and 14 days after admission to the facility. If the department determines that the treatment is no longer medically necessary, and the parents and the treating professional disagree, the facility may hold the child for up to three judicial days in order to allow the parents to file an At-Risk Youth Petition with the court.

Five days after the independent review, the child may file a petition requesting judicial review. At the hearing, the facility or parents must show the medical necessity for continued treatment.

Thirty days later the independent or judicial review, whichever is later, a professional person or a county designated mental health professional must file a petition under the Involuntary Treatment Act or the child must be released. The department may contract out the independent reviews. The child must be released upon written request of the parent.

The Department of Health must conduct a survey of providers of mental health services to minors. The survey collects information relating to parental notification of their minor children's mental health treatment.

Parents are notified of their child's chemical dependency treatment only if the child consents to the notice or the treatment provider determines the child lacks the capacity to provide consent to the notice. The chemical dependency notice provision is based upon federal law.

CRC REQUIREMENTS AND COUNTY CONTROL OF TREATMENT CENTERS

The department's duty to provide treatment facilities and services under RCW 13.32A.197 may be delegated to the counties. A county, or group of counties, is authorized to apply for funding to administer the facilities and services for their population. An interested county must present to the department an application and plan for providing the services.

Funds may be distributed according to criteria formed by the department, but including the county's at-risk population, rate of poverty, per capita income and other demographic criteria. Funds shall be distributed on a reimbursement basis once the county meets the terms of its plan. The funds given to counties may not replace local funds for existing programs and may not exceed the biennial appropriations for these facilities and services.

County administered treatment facilities must be licensed by the department and appropriately staffed. A county may not restrict use of the treatment center to its residents.

The department or a county may locate a secure CRC on the grounds of a detention center. The staffing ratio at secure CRCs is changed from no more than 3 to 8, to no less than 1 to 10.

CONTEMPT PROCEDURES

The type of contempt sanctions available to a court, and the process for imposing them, are clarified. The current contempt sanctions for truancy, dependency and at-risk youth actions are declared civil (remedial) contempt sanctions. The court will use the civil contempt procedure for processing contempt actions, as described in RCW 7.21.030. This process does not require the involvement of a prosecuting attorney.

HARBORING RUNAWAYS

The crime of unlawful harboring is expanded to include providing shelter to a runaway with the intent to engage the child in a crime or contribute to the child's delinquency. Failing to report the location of a runaway for the same reason is made a misdemeanor crime.

Appropriation: None.

Fiscal Note: Requested on February 3, 1998.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The purpose of this bill is to insure that the intent of the Becca Bill is being implemented. At-risk youth are still in need of protection, but shortcomings in the present system leave holes in the system of protection which was intended by the Becca Bill. It was recognized in 1995 that the system would need to be monitored and improved over time. This is one of the points of improvement. Personal accounts indicate that mentally ill children are not receiving treatment. The children leave treatment because the law requires that they be released on request. This has

resulted in these children being free to inflict harm on themselves and to adopt new, dangerous behaviors when they are placed in detention facilities. It has also meant that parents go out of the state to find treatment. DSHS supports removal of the restriction on placing CRCs at detention sites. This has been a barrier to contracting with counties who are interested in providing secure CRC facilities. Courts do not want to criminalize at-risk behavior. However, a recent appellate court opinion would force them to do that whenever a child is found in contempt of an at-risk youth order or a truancy order. It is important to clarify the law that this contempt of court is civil contempt, not criminal contempt. This clarification needs to be made as to contempt in truancy actions too. The language in the bill tries to do this but probably is insufficient.

Testimony Against: Giving counties the authority to provide family reconciliation services and crisis residential centers is fraught with problems. Currently, there are CRCs that serve more than one county. How will those CRCs be administered under this bill? What will happen to current DSHS contracts with groups operating CRCs in counties that decide to administer their own CRC system? Will county-administered CRCs hold beds open whether or not children are there to fill them? The department's family reconciliation services program is running well. There is no reason for counties to take over these services. The counties can currently contract with the department to run secure CRCs. The only reason they do not do so now is lack of funding. That is the real policy issue. State employees currently act as gatekeepers for family reconciliation services. There is no reason state employees should not continue to provide these services. The mental health portion of the bill has a flawed admissions process. The only judicial review of an admission occurs 90 days after the admission. This is too long. In 1990-95, the average length of stay for minors in a mental health facility was 14 days. This shows that 90 days is an inordinately long time to keep a child confined without judicial review. Adding a new definition for review of admission is unnecessary. Mental health workers are familiar with the "medical necessity" definition. Adding the "medically appropriate" definition will just breed confusion. The process in the bill contains no independent review of whether a child has a medical condition warranting inpatient treatment. The only independent review occurs five days after confinement and examines whether the child's condition has improved. The significant question is whether the original condition still exists and warrants confinement. Only biased hospital employees look at this on admission. Federal reports indicate that fraudulent practices do occur at mental health hospitals. Without independent review, private hospitals may admit children to increase their revenues, not because the child has a condition which needs treatment. The bill does not prevent this scenario.

Testified: Representative Mike Carrell (sponsor); Cathy Wolfe (co-sponsor); Rebecca Bates, parent of twin girls (pro); Joyce Newsome, Snohomish County (pro); Jennifer Strus, Director, Division for Program and Policy, Department of Social and Health Services (questions/concerns); Bev Hermanson, WFSE (concerns); Margaret Casey,

Washington State Catholic Conference (pro with one concern); Martha Harden, Superior Court Judges Association (pro with concerns); and Richard Warner, Citizens Committee on Human Rights (con).