

SENATE BILL REPORT

ESHB 2761

As Reported By Senate Committee On:
Human Services & Corrections, February 26, 1998

Title: An act relating to at-risk youth.

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

Sponsors: 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: Human Services & Corrections: 2/25/98, 2/26/98 [DPA, DNPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Schow and Stevens.

Minority Report: Do not pass as amended.

Signed by Senator Kohl.

Staff: Richard Rodger (786-7461)

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 Amended Bill: Commitment to Mental Health or Substance Abuse Treatment.

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 for evaluation. 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 seven and 14 days after being brought 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.

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.

Amended Bill Compared to Substitute Bill: The striking amendment removes all provisions relating to treatment centers, the location of secure CRCs, staffing ratios at CRCs, and harboring runaways.

The following changes are made to the provisions regarding mental health and chemical dependency treatment: intent language is added; the reference to medical assistance program is changed to "public funds;" facility notification to DSHS includes the date of child's admission; the facility may not hold a "self-admitted" child when the child notifies the facility of his or her intent to leave; and the term "admission" is changed to "held for treatment."

The striking amendment also allows service of truancy petitions by mail.

Appropriation: None.

Fiscal Note: Requested on February 3, 1998.

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

Testimony For: This bill is a continuation of the work started in 1995 with the first Becca bill. It clarifies the admission of children to mental health and chemical dependency treatment; gives the department and counties greater flexibility; addresses recent court cases on contempt; and expands the crime of unlawful harboring of a minor.

Testimony Against: We need to protect children, parents and the state from the psychiatric industry which has a proven history of abuse. Parents need to do a better job of raising their children and we should not involve the state in doing this.

More money needs to be appropriated to assist counties in meeting the expenses of this bill. There are not sufficient treatment facilities to meet the current needs and this bill will expand that need. The judicial review should be moved to an earlier point in the process. An independent professional should conduct the initial evaluation.

Testified: PRO: Representative Carrell, original prime sponsor; Jennifer Strus, Jann Hoppler, DSHS; Martha Harden, Superior Court Judges Association; CON: Richard Warner, Citizens Commission on Human Rights; Seth Dawson, Common Ground for Children.