

HOUSE BILL REPORT

HB 1300

As Reported by House Committee On:
Human Services

Title: An act relating to access to information on mental health services received by persons who have been committed for custody or supervision or who have been civilly committed after being found incompetent to stand trial for a felony.

Brief Description: Accessing mental health information.

Sponsors: Representatives Hurst, Dickerson, Pearson, Klippert, O'Brien and Smith.

Brief History:

Committee Activity:

Human Services: 1/28/09, 2/5/09 [DPS].

Brief Summary of Substitute Bill

- Expands the list of entities and/or individuals who may obtain access to treatment history information under the Involuntary Treatment Act (ITA).
- Combines sections throughout the ITA which address the release of information to individuals and entities and the scope of information to be released.
- Renders inoperable any provision regarding the release of information which conflicts with federal requirements necessary for funding.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

Staff: Linda Merelle (786-7092)

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

On New Year's Eve 2007, a young woman in Seattle was stabbed and killed. The person charged with the offense had significant mental illness diagnoses and was under the supervision of a Department of Corrections officer. As a result, in early 2008 and throughout the year, a work group of mental health professionals, law enforcement, prosecuting and defense attorneys, and others convened to address areas in the involuntary treatment system that could be modified or further developed to improve community safety.

The members of the work group learned that communication across systems was a general problem that the professionals who dealt with mentally ill persons faced every day. Many professionals are prohibited from communicating with others because of confidentiality laws. In some cases, even where no legal prohibitions existed, there was a perception of a prohibition of sharing information, and the information was not shared. Further, statutes regarding confidentiality are not all located in one place, and a determination of the kinds of data and communications allowed to be shared were sometimes laborious and complicated.

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for an involuntary civil commitment. Persons can be initially detained for up to 72 hours for evaluation and treatment, and upon a petition to the court and subsequent order, the person may be held for a further 14 days. Upon a further petition and order by a court, a person may be held for a period of 90 days. If a person has been determined to be incompetent and criminal charges have been dismissed, and the person has committed acts constituting a felony as a result of a mental disorder and presents a substantial likelihood of repeating similar acts, the person may be further committed for a period of up to 180 days. No order of commitment under the ITA may exceed 180 days.

The ITA contains provisions for a release of mental health services information to various entities, including the Department of Corrections, attorneys, law enforcement, and others. The provisions regarding who is entitled to receive confidential information and what persons are allowed to do with that information are contained in several different places throughout chapter 71.05 of the act. In some cases, the scope of the information that may be released to one entity, such as law enforcement, is limited.

Summary of Substitute Bill:

A new section is created in RCW 71.05 to allow expanded access to mental health treatment history information to: (1) law enforcement, (2) public health officials, (3) the Indeterminate Sentencing Review Board, (4) prosecuting and defense attorneys, and (5) jail personnel. The new section also consolidates the provisions throughout RCW 71.05 regarding the release of confidential information.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies the definition of legal counsel, and allows the provider to respond to a request for information rather than requiring that legal counsel respond. State and county jails and hospitals are included in the definition of mental health service providers. The substitute bill clarifies that the mental health information may only be used by courts and

prosecutors to determine what charges to file and what bail to set. Any mental health information provided to the court must be filed under seal and any hearing which discloses this information must be closed to the public. The Department of Social and Health Services is required to develop standardized templates to request mental health information and to respond to such requests.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The inability to share information in the past has led to catastrophic incidents. The intent of this bill is to prevent catastrophic incidents by taking intervention actions. A current provider may not be able to provide information about a person in law enforcement regarding treatment that may assist a police officer or others. Without this bill, the prosecutor and a detective cannot have communications regarding the mental health of a person even as a result of a hearing pursuant to the ITA. Usually, mental illness is a mitigating factor and may lead to lower charges. However, it may lead to higher bails. It is necessary to break down communication barriers but still preserve privacy.

(With concerns) There may be some unintended consequences to this bill which will affect clinical social workers who provide mental health services. If individuals become concerned that their mental health information may be revealed without their consent, a client's ability to share information with a provider as a part of their treatment may be stifled. While the intent of the statute is important, increased access to mental health information does not help that goal when providers are already mandatory reporters.

(Opposed) None.

Persons Testifying: (In support) Representative Hurst, prime sponsor; Ethan Rogers, King County Prosecutor's Office; James Adams, National Alliance on Mental Illness-Washington; and Eleanor Owen, National Alliance on Mental Illness-Greater Seattle.

(With concerns) Laura Groshong, Washington State Society for Clinical Social Workers.

Persons Signed In To Testify But Not Testifying: None.