SENATE BILL REPORT
2SHB 3076

As Reported by Senate Committee On:
Human Services & Corrections, February 25, 2010
Ways & Means, March 1, 2010

Title: An act relating to evaluations of persons under the involuntary treatment act.

Brief Description: Concerning the involuntary treatment act.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Dickerson and Kenney; by request of Governor Gregoire).

Brief History: Passed House: 2/15/10, 98-0.
Committee Activity: Human Services & Corrections: 2/25/10 [DPA].
Ways & Means: 3/01/10 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.
Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hewitt, Hobbs, Honeyford, Keiser, Kline, Kohl-Welles, McDermott, Murray, Parlette, Pridemore, Regala, Rockefeller and Schoesler.

Staff: Tim Yowell (786-7435)

Background: The Involuntary Treatment Act allows a person to be detained for involuntary mental health treatment at a locked mental health facility if the person meets criteria for civil commitment. A commitment under the Involuntary Treatment Act must be initiated by a designated mental health professional (DMHP). In order to initiate a civil commitment a DMHP must find, following an investigation, that a person who is not willing to voluntarily

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seek mental health treatment presents, as a result of a mental disorder, a likelihood of serious harm or that the person is gravely disabled. A person presents a likelihood of serious harm when the person's behavior indicates a substantial risk that the person will inflict physical harm on himself or herself, another person, or the property of others. A person is gravely disabled when, as a result of a mental disorder, the person is in danger of serious physical harm resulting from a failure to provide for the person's essential human needs of health or safety, or manifests severe deterioration in routine functioning and is not receiving such care as is essential for the person's health or safety.

Once a DMHP initiates a civil commitment, the superior court in the county where the person is detained must hold a probable cause hearing within 72 hours to determine whether there is a basis to continue the involuntary mental health treatment. It is not uncommon for a person who is detained by a DMHP to be transported across county lines for treatment at an evaluation and treatment facility or state hospital. Individuals who are discharged from civil commitment sometimes receive a less restrictive order (LRO) or conditional release order specifying conditions of release, including cooperation with outpatient mental health treatment. Violation of the conditions of an LRO or conditional release order may provide the basis for a new episode of civil commitment, even when the person does not currently meet other civil commitment criteria.

Summary of Bill (Recommended Amendments): The Washington Institute for Public Policy must search for validated mental health tools for a DMHP to use when assessing persons for civil commitment.

In determining whether a person is gravely disabled or presents a likelihood of serious harm, the court or evaluating DMHP must consider the symptoms and behavior of the person in light of all available evidence or information concerning the person's historical behavior, as disclosed by the clinical record or credible witnesses with knowledge of the person.

Symptoms or behavior which standing alone would not justify civil commitment may support an inference of grave disability or likelihood of serious harm when: (1) such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (2) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the person; and (3) without treatment, the continued deterioration of the person is highly probable.

Whenever a person who is involuntarily committed for mental health treatment is discharged from an evaluation and treatment facility or a state hospital, the evaluation and treatment facility or state hospital must provide notice of the discharge, and a copy of any LRO or conditional release order, to the DMHP office in the county where the commitment was initiated, and the DMHP office in the county where the individual is expected to reside. The evaluation and treatment facility or state hospital need not send a copy of the LRO or conditional release order if it has entered into a memorandum of understanding obligating another entity to provide these documents. The notice and documents must be provided within one business day. The Department of Social and Health Services (DSHS) must maintain and make available an updated list of contact information for DMHP offices around the state.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): The bill is null and void if funds are not provided for its implementation in the 2010 supplemental appropriations act.

The changes in ITA commitment standards are not effective until January 2012.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for Section 2 which takes effect January 2012.

Staff Summary of Public Testimony on Recommended Amendments (Human Services & Corrections): PRO: The best prediction of violence is past history. Families often have the best information as to what is happening. Early intervention may save costs by producing shorter hospital stays and fewer commitments to the state hospital. Courts and DMHPs should be required to consider input from families and others with knowledge of a person with mental illness. Intervention prevents harm associated with involvement in the criminal justice system. Having a validated measure for DMHPs to use has the potential to standardize commitment practices around the state. A court should be able to consider symptoms and behaviors and not just overt actions, especially when the person has a history of violent acts.

CON: The inference of a likelihood of serious harm or grave disability is new and exceeds the latitude given in controlling court cases. This is an attempt to enact preventive detention, which is not allowed by constitutional standards.

OTHER: We support getting people into treatment more quickly and considering input from family members and others in treatment decisions. We are concerned about the fiscal impact if adequate funding is not provided for additional civil commitment beds.

Persons Testifying (Human Services & Corrections): PRO: Christos Dagadakis, Washington Psychiatric Association; Seth Dawson, Eleanor Owen, National Alliance on Mental Illness; Kari Burrell, Office of the Governor.

CON: Mike DeFelice, The Defender Association.

OTHER: Gregory Robinson, Washington Community Mental Health Council.

Staff Summary of Public Testimony on Recommended Amendments (Ways & Means): OTHER: The Association of Counties supports the goals of the legislation, but it is essential that the community mental health system be provided the resources necessary for the legislation to accomplish those goals. There are not nearly enough acute psychiatric beds available in community hospitals or evaluation and treatment centers. Consequently, even without the additional detentions that would result from this legislation, people who have

been detained for involuntary treatment often have to be restrained in hospital emergency rooms for days at a time while community mental health professionals search all over the state for an available treatment bed. State population has increased by 13 percent over the past decade, but the number of psychiatric acute care beds has decreased by 15 percent over the same period. The Community Mental Health Center Association supports the goals of the legislation, but emphasizes that this legislation will drive additional costs for involuntary treatment act hearings and detentions, at the same time that state funding for community mental health services is being cut.

Persons Testifying (Ways & Means): OTHER: Rashi Gupta, Washington Association of Counties; Amnon Shoenfeld, King County Department of Mental Health and Chemical Addiction Services; Ann Christian, Washington Community Mental Health Center Association.