

SENATE BILL REPORT

SHB 2725

As of February 28, 2014

Title: An act relating to court review of detention decisions under the involuntary treatment act.

Brief Description: Concerning court review of involuntary treatment decisions.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Cody, Morrell, Jinkins, Harris, Rodne, Bergquist, Robinson and Walsh).

Brief History: Passed House: 2/14/14, 96-0.

Committee Activity: Human Services & Corrections: 2/20/14 [DP-WM].

Ways & Means: 3/03/14.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators O'Ban, Chair; Darneille, Ranking Member; Padden.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Carma Matti-Jackson (786-7454)

Background: Designated mental health professionals (DMHPs) are the gatekeepers of the mental health civil commitment system. Under the Involuntary Treatment Act (ITA), a person may be detained by a DMHP following an investigation if the DMHP determines that the person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled. Likelihood of serious harm means a substantial risk that the person will inflict serious harm on himself, herself, or others as evidenced by behavior which caused such harm or places another person in reasonable fear of sustaining such harm. Gravely disabled means that the person is in danger of serious physical harm from a failure to provide for that 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.

A DMHP's investigation must consist of an evaluation of the specific facts supporting detention and an evaluation of the credibility of any persons providing information to support

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detention. A personal interview with the person is required unless the person refuses an interview. A DMHP may not initiate involuntary detention if it appears the person will voluntarily seek appropriate treatment. A DMHP must consider all reasonably available information from credible witnesses, including family members, landlords, neighbors, or others with a significant history of involvement with the person. A DMHP must also consider reasonably available treatment records, including records of prior commitment, prior determinations of competency to stand trial or criminal insanity, and any history of violent acts.

If the likelihood of serious harm is imminent, or if the person is in imminent danger due to being gravely disabled, the DMHP may immediately cause the person to be detained to a triage facility, crisis stabilization unit, evaluation and treatment facility, or emergency department. If the likelihood of serious harm or grave disability is not imminent, the DMHP must obtain a judicial order authorizing detention and certifying that the petition is supported by probable cause. The judicial order may be based on sworn telephonic testimony or the DMHP's sworn declaration, and is issued *ex parte*.

Initial detention under the ITA is for 72 hours, excluding weekends and holidays, during which time the detained person is provided with appointed counsel or allowed to retain counsel. Before the end of the 72-hour period, the person must either be released, or the facility providing treatment must file a petition in superior court to extend the detention for up to 14 additional days, and the court must hold a probable cause hearing to determine whether there is cause to issue an order extending the detention. This probable cause hearing is an adversary hearing, governed by the rules of evidence, in which the facility must be represented by the county prosecuting attorney.

Summary of Bill: If a DMHP decides not to initiate detention of a person under the ITA, an immediate family member of the person may petition the superior court for review of the DMHP's decision. The family member must serve notice of the petition on the DMHP, who must provide the court with a written explanation of the basis for not initiating detention of the person within 24 hours. If the court finds probable cause to support initial detention and that the person has refused to accept appropriate evaluation and treatment voluntarily, the court may issue an order for initial detention.

For the purposes of this act, immediate family member means spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling.

This act is null and void if specific funding is not provided in the Omnibus Appropriations Act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Human Services & Corrections): PRO: The fiscal cost of this bill is a sign that the present system isn't working. DMHPs are under a lot of pressure to do bed control, and to consider costs rather than whether there is a mental illness and detention is appropriate. This bill addresses that pressure. When DMHPs do not take action, someone frequently ends up dead. This bill is important for public safety. We agree that the mental health system is severely underfunded, too focused on crisis services, and should be more invested in early intervention. We still, however, need the ITA. Families are very desperate and hurt when they try to get but can't obtain help for their loved ones. The greater the fiscal note, the more of a sign that we need this bill. There are large costs associated with inaction which have not been factored into the fiscal analysis. If more commitments were to happen earlier, that would be a good thing. Judges should be empowered to determine whether commitment is appropriate. Families have a wealth of information. I practiced as a DMHP for 25 years, and it is reasonable to assume that availability of a bed affects commitment decisions at some level. Having a supervisor review detention decisions would not be helpful, because the supervisor would only review what the DMHP puts forward, not what the family knows. The fiscal note seems to be inflated. Much of the cost of treatment expansion has already been paid for as a result of ESSB 5480 (2013).

CON: Involuntary commitment should be informed by the thorough review of professionals with expertise in mental health. A judge without this expertise may feel pressure to order detention just to be on the safe side. We suggest instead that if a DMHP doesn't seek commitment, the family should be empowered to appeal to the DMHP's supervisor, or some other mental health professional (MHP). If the supervisor or MHP doesn't agree, the family member would then have a right to go before a judge. This could result in a faster road to detention. We are prepared to be very flexible, and work with this committee to refine this language. The fiscal impact of this bill will weaken the system, rather than strengthen it. Rather than dozens of cases, the impact is likely to be hundreds of cases entering the system. DMHPs will be called into court by defense to discuss why the case was legally insufficient, and lose six hours of time. The focus has to change from detaining individuals to maintaining the health of persons with mental illness while they are in the community. More effective preventative efforts would have a huge ripple effect in reducing the burdens on the commitment system. Circumventing the DMHP would deprive the court of an objective opinion and assessment of the credibility of witnesses. DMHPs are instructed to prevent inappropriate confinement and safeguard individual rights while balancing these concerns against the safety of the individual and the public. Judges do not have medical or psychiatric expertise, and will be inclined to detain most individuals. The system has obvious problems which this bill does not address, including lack of oversight or monitoring in the community. Individuals, once they are detained, are not held long enough to truly get better. We should have more input from families at the stage where they are released. DMHPs do not concern themselves with bed control in the counties where I have worked. Some cases end tragically, but this is not as frequent as has been represented. DMHPs make good decisions overall. We cannot prevent all tragedies without sacrificing civil rights to a greater degree than I would be comfortable with.

OTHER: We suggest that the definition of those eligible to petition the court under this bill should be expanded to include attorneys-in-fact and court-appointed guardians, in addition to immediate family members.

Persons Testifying (Human Services & Corrections): PRO: Representative Jinkins; Seth Dawson, National Alliance on Mental Illness (NAMI), NAMI WA; Judy Snow, Pierce County Jail; Doug Reuter, citizen.

CON: Chris Kaasa, American Civil Liberties Union of WA; Mike De Felice, WA Defender Assn., WA Assn. of Criminal Defense Attorneys; Carola Schmid, Snohomish County Human Services.

OTHER: Steve Lindstrom, WA Assn. of Professional Guardians.