

# SENATE BILL REPORT

## SB 5165

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As of February 4, 2013

**Title:** An act relating to increasing the authority of superior court commissioners to hear and determine certain matters.

**Brief Description:** Increasing the authority of superior court commissioners to hear and determine certain matters.

**Sponsors:** Senators Hargrove and Carrell.

**Brief History:**

**Committee Activity:** Law & Justice: 2/01/13.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Sharon Swanson (786-7447)

**Background:** Article IV section 23 of the Washington State Constitution authorizes the appointment of up to three court commissioners per county. The court commissioners are appointed by the superior court and are authorized to perform the same duties as a judge of the superior court at chambers, or as otherwise provided by law to aid the administration of justice. These duties include hearing matters related to probate, hearing and making determinations for small claims appeals, issuing temporary restraining orders, presiding over arraignments, and other pre-trial matters in adult criminal cases, and performing other judicial duties as required by the judge. Court commissioner salaries are paid by the county.

In addition to the constitutionally authorized commissioners, the Legislature has authorized supplementary court commissioners to assist superior court judges in specific areas of law. These include mental health commissioners and family court commissioners. The duties of these court commissioners are limited by statute to specific powers pertinent to assisting the court in mental health or family court matters respectively. Both mental health commissioners and family court commissioners are appointed by the superior court with prior authorization of the county legislative authority.

Counties with a population of more than 400,000 are authorized to approve the creation of criminal commissioner positions in superior court. The presiding judge of the superior court in such a county may appoint one or more attorneys to serve as criminal commissioners to assist the court with handling adult criminal cases.

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*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.*

Antipsychotic medication may be administered without consent to a person who has been committed for less than 180 days under the Involuntary Treatment Act pursuant to court order if the petitioner proves by clear, cogent, and convincing evidence that a compelling state interest justifies overriding the patient's lack of consent, the proposed treatment is necessary and effective, and medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective. Such a person is entitled to counsel and the protections of the rules of evidence. Antipsychotic medication may be administered without consent in an emergency, provided that a court petition is filed on the next judicial day. The court order for involuntary medication is effective until the expiration of the person's current 180-day order of commitment.

**Summary of Bill:** Court commissioners may hear applications and petitions filed in superior court for the purpose of administering antipsychotic medication without consent to a person who has been committed pursuant to the Involuntary Treatment Act.

Court commissioners may authorize and issue search warrants and orders to intercept, monitor, or record wired or wireless telecommunications, or for the installation of electronic taps or other devices to include, but not limited to, vehicle global positioning system or other mobile tracking devices, with all the powers conferred upon the judge of the superior court in such matters.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: A petition for involuntary medication may be filed in either the superior court that ordered the commitment of the person or the superior court of the county in which the individual is receiving treatment. Western State Hospital is located in Pierce County, the state has been filing many of these cases here even though the person was committed by the superior court in a different county. The source of a mental health commissioner's authority do not include involuntary medication hearings as part of the mental health commissioner's authority. Thus, to take action on persons committed under RCW 10.77 may require a judge to do the work. Proving authority to mental health commissioners with this bill is a clean up for legislation passed last session. This legislation will increase and clarify the authority of certain superior court statutory commissioners to hear and determine matters relating to mental health proceedings and the issuance of search warrants and related orders in criminal law matters. Statutory commissioners have the authority granted via statute. The purpose of this bill is to extend the authority vested in the constitutional commissioners to statutory commissioners. Washington Association of Prosecuting Attorneys (WAPA) would prefer to see the extension of the authority to issue search warrants given only to criminal court commissioners and not family court commissioners as criminal court commissioners will have greater familiarity with criminal law.

CON: Serious concerns about court commissioners issuing search warrants and wire tap warrants. This bill significantly extends the powers of statutory commissioners into areas of constitutional authority. This raises serious concerns. Court commissioner rulings are currently done in the open and everyone knows the decision and can move to revise immediately. This bill would allow making decisions and issuing warrants ex parte and will take away the ability for people to know that a commissioner issued the warrant and is subject to review and possible revision by a superior court judge.

**Persons Testifying:** PRO: Bryan Chushcoff, Pierce County Superior Court; Tom McBride, WAPA.

CON: Robert Quilhan, WA Assn. of Criminal Defense Lawyers;