# SENATE BILL REPORT
# SSB 5456

As Amended by House, April 17, 2013

**Title**: An act relating to detentions under the involuntary treatment act.

**Brief Description**: Concerning detentions under the involuntary treatment act.

**Sponsors**: Senate Committee on Human Services & Corrections (originally sponsored by Senators Schlicher, Becker, Keiser, Bailey, Frockt, Cleveland, Hargrove, Darneille and McAuliffe).

**Brief History:**
**Committee Activity**: Human Services & Corrections: 2/05/13, 2/18/13 [DPS, w/oRec].
Passed Senate: 3/13/13, 49-0.
Passed House: 4/17/13, 97-0.

## SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report**: That Substitute Senate Bill No. 5456 be substituted therefor, and the substitute bill do pass.
Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Harper.

**Minority Report**: That it be referred without recommendation.
Signed by Senator Padden.

**Staff**: Kevin Black (786-7747)

**Background**: A person may be detained for civil commitment under the Involuntary Treatment Act (ITA) if, due to a mental disorder, the person presents a likelihood of serious harm or is gravely disabled. Mental disorder means any organic, mental or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions. Likelihood of serious harm means a substantial risk that a person will inflict physical harm on themselves, others, or the property of others. Gravely disabled means a danger of serious physical harm resulting from a failure to provide for essential human needs of health or safety, or a severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control combined with an absence of care essential for health or safety.

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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.*

Detentions under the ITA are initiated by designated mental health professionals (DMHPs) employed by regional support networks. A DMHP conducting a detention investigation may initiate detention one of two ways. If the likelihood of serious harm or danger due to grave disability is imminent, the DMHP may initiate an emergency detention and cause the person to be taken into emergency custody in an evaluation and treatment facility (E&T) for up to 72 hours, excluding weekends and holidays. Detention past this 72-hour period requires filing of an additional civil commitment petition and a probable cause hearing in superior court. If the likelihood of serious harm or danger to due grave disability is not imminent, the DMHP may initiate detention for up to 72 hours in a manner similar to the process for an emergency detention, except that the DMHP's petition or sworn telephonic testimony must be reviewed in advance for probable cause and approved by a judicial officer.

A mental health professional is a licensed psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker.

**Summary of Substitute Bill**: A DMHP must take serious consideration of the observations and opinions of examining physicians. An examining physician who disagrees with a decision not to initiate detention may submit a declaration describing why the physician believes detention is appropriate and stating whether the physician is willing to testify to the physician's observations in court. A DMHP who receives such a declaration and does not initiate detention must respond in writing to the physician.

A DMHP who conducts an evaluation for imminent likelihood of serious harm or imminent danger due to grave disability must also evaluate the person for likelihood of serious harm or grave disability that does not meet the imminent standard for emergency detention.

The fact that a mental disorder is caused by an underlying medical condition does not provide a reason to withhold detention under the ITA. The fact that a person has been involuntarily detained does not give the right to perform medical treatment against the person's will, except as expressly authorized by law.

**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 on Original Bill**: PRO: This bill attempts to clear up confusion about the etiology of mental health disorders and to put the patient first. Medical and psychiatric care go hand in hand and should not be treated separately. The bill simply requires an evaluating DMHP to present the case for detention. The DMHP sees the patient later than the physician and doesn't get the whole picture when they arrive after the patient is sedated. Inaccurate evaluation in this situation risks the life of the patient. This bill creates checks and balances. Capacity issues can interfere with the decision of what is appropriate medical care. Forty-five other states trust doctors and other parties to make detention decisions. Our goal is to get people help as soon as they need it and so we support expanding

opportunities for detention. Emergency commitment should be allowed when there is a substantial risk of harm.

CON: DMHPs balance individual rights with the protection of the individual and the community. There is a tension between a physician seeking treatment for a patient and the involuntary commitment law. DMHPs make good decisions, and know the limits of the legal system. Recourse is currently available for physicians to resubmit a request for evaluation in many areas of the state. This bill would create a logistical nightmare. In a rural county, a patient could get stuck over the weekend waiting for legal review. The doctors would have to testify and the DMHPs would be asked in court why they did not find grounds for detention. Detention is a serious deprivation of liberty requiring stringent safeguards. This bill would water-down the evidence required for forced detention. Doctors may have less knowledge of less-restrictive alternatives.

**Persons Testifying**: PRO: Senator Schlicher, prime sponsor; Seth Dawson, National Alliance for Mental Illness (NAMI), NAMI Washington; Kirsten Nestler, citizen.

CON: Robby Pellett, WA Assn. of DMHPs; Mike De Felice, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Helen Nilon, Mental Health Action; Shankar Narayan, American Civil Liberties Union of WA.

**House Amendment(s)**: Provisions relating to mental disorders that are caused by underlying medical conditions are removed. A DMHP must consult with any examining emergency room physician regarding the physician's observations and opinions relating to the person's condition, and whether detention under the ITA is appropriate. The DMHP must document the consultation and the views of the physician.