

SENATE BILL REPORT

SB 6513

As of February 20, 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: Senators Becker, Pedersen, Dammeier, Angel and O'Ban.

Brief History:

Committee Activity: Human Services & Corrections: 2/03/14, 2/05/14 [DP-WM].
Ways & Means:

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

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

Signed by Senators O'Ban, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Padden.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Kevin Black (786-7747)

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

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.

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.

Appropriation: None.

Fiscal Note: Requested on January 30, 2014.

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: There are so many sad stories that could be prevented if we fixed the problems in our mental health system. This bill gives a recourse to families who need assistance for their loved ones. Our

son was shot and killed by the police after an acute episode of bipolar disorder. He was denied treatment again and again. Early intervention is the key to saving lives and money. We should fight for persons with mental illness, not prevent them from being treated. In Arizona, which has laws similar to this bill, it was easy to get our son treatment. This will give families a ray of hope when the DMHPs ignore the direct evidence they provide. If this bill is not passed, my son may end up dead. When people cycle in and out of crisis, each breakdown is worse than the last. How many of the 1000 suicides in Washington last year could have been prevented if family members had been able to submit their stories to civil commitment judges? We need to give families the ability to help each other when individuals in the family are not able to help themselves because of mental illness. The DMHPs told us we could not get help for my friend unless he made a death threat against us. If this bill had been passed earlier, he might still be alive. I also cannot get help for my son from the DMHPs in Seattle. Our hands are tied by the current system. These tragedies must not continue. This bill will allow persons with mental illness to become more stable, and make our communities safer and more humane. Persons who are mentally ill do not think that they are ill. People cannot get the help they need if no one will listen to families.

CON: The current system allows for cases to be properly investigated, while safeguarding public safety and individual rights. This bill would impact the efficiency of the civil commitment system, which is already overwhelmed. Family members are often so close to a situation that their emotions understandably render them unable to temper their wishes within the constraints of the law. This bill would increase the problem of boarding patients in emergency rooms. The Legislature took action in 2010 to increase the ability of DMHPs to initiate involuntary commitment; implementation of that bill was delayed for budget reasons until July 2014. Please wait to see what impact the earlier changes have before changing the law again. Perhaps it would be better to have a second DMHP review treatment decisions. You will not solve anything if you do not address the lack of resources in the system. There simply are not places that people can go.

Persons Testifying (Human Services & Corrections): PRO: Senator Becker, prime sponsor; Seth Dawson, National Alliance on Mental Illness; Nancy Reuter, Doug Reuter, Ann Mulvey, Sara Hutchings, Kathleen Johnson, Katie Wixom, Mendy Maserang, Mary Jane Thomas, Karen Schirmer, citizens.

CON: Mike DeFelice, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Gregory Robinson, WA Community Mental Health Council; David Lord, Disability Rights WA; Rebecca Faust, citizen.