

HOUSE BILL REPORT

HB 1258

As Reported by House Committee On:

Judiciary
Appropriations

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

Brief Description: Concerning court review of detention decisions under the involuntary treatment act.

Sponsors: Representatives Walkinshaw, Rodne, Jinkins, Haler, Cody, Harris, Goodman, Muri, Fagan, Hansen, Buys, Orwall, Kilduff, Springer, Senn, Walsh, Pettigrew, Robinson, Bergquist, Stanford, Fitzgibbon, Pollet, Stokesbary, Sells, Peterson, McBride, Pike, Farrell, Ortiz-Self, Zeiger, Van De Wege, Tharinger, Hunter, Sullivan, Lytton, Riccelli, Carlyle, Clibborn, Magendanz and Gregerson.

Brief History:

Committee Activity:

Judiciary: 1/20/15, 1/22/15 [DP];

Appropriations: 1/26/15, 1/28/15 [DP].

Brief Summary of Bill

- Establishes a process allowing an immediate family member, guardian, or conservator to petition the court for review of a designated mental health professional's decision not to seek a person's detention under the Involuntary Treatment Act.
- Requires notification of the petition process by the Department of Social and Health Services, regional support networks, and agencies employing designated mental health professionals.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

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.

Staff: Omeara Harrington (786-7136).

Background:

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for involuntary civil commitment. The standard for commitment under the ITA requires that, due to a mental disorder, a person poses a likelihood of serious harm or is gravely disabled. "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions. "Likelihood of serious harm" means that a person poses a substantial risk of physical harm to self, others, or the property of others, as evidenced by certain behavior, or that a person has threatened the physical safety of another and has a history of one or more violent acts. "Grave disability" means that a person is in danger of serious physical harm due to a failure to provide for his or her own essential human needs, or that a person manifests a severe deterioration in routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions, and is not receiving the care essential for health or safety.

Designated mental health professionals (DMHPs) are responsible for investigating whether or not a person should be detained for an evaluation for involuntary mental health treatment. The initial detention period under the ITA is for up to 72 hours, excluding weekends and holidays. Under emergency circumstances, when the likelihood of serious harm or danger due to grave disability is imminent, a person may be detained without a court order. Under non-emergent conditions, a court order is required for an initial detention. A court order to detain a person for a 72-hour period may be issued upon the DMHP's request when the court is satisfied that there is probable cause to support the petition and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

Prior to pursuing initial detention, the DMHP is instructed to first assess the credibility of the information received and attempt to interview the person about whom the information has been provided. The DMHP must consider all reasonably available information from credible witnesses and records regarding any history of one or more violent acts, prior commitments under the ITA, prior determinations of incompetency or insanity, and prior recommendations for evaluation for incompetency or insanity in criminal proceedings. Credible witnesses include anyone with significant contact and history of involvement with the person. The DMHP cannot seek initial detention for involuntary treatment unless satisfied that the allegations are true and the person will not voluntarily seek appropriate treatment.

Summary of Bill:

If a DMHP decides not to file a petition for initial detention, or if 48 hours have elapsed since a DMHP has received notice of a person and the DMHP has not taken action to detain the person, an immediate family member, guardian, or conservator of the person may petition the superior court for review of the DMHP's decision. The petitioner must serve notice of the petition on the DMHP. Within 24 hours of receiving notice of the petition, the DMHP is required to either: (1) notify the court that the person has been detained or has voluntarily accepted appropriate treatment, in which case the court must dismiss the petition; or (2)

provide the court with a written explanation of the basis for the decision not to seek initial detention and a copy of the information collected during the DMHP's investigation.

If upon review of the DMHP's decision the court finds that there is probable cause to support a petition for initial detention, taking into consideration any information provided by the petitioner, the court may enter an order for initial detention.

The Department of Social and Health Services and each regional support network or agency employing DMHPs must publish information describing the petition process in an easily accessible format. Upon receiving a complaint about a person not being detained, a DMHP or DMHP agency must inform the complainant about the petition process.

Immediate family members include: spouses, domestic partners, children, stepchildren, parents, stepparents, grandparents, and siblings.

Appropriation: None.

Fiscal Note: Requested on January 16, 2015.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The mental health system is underfunded and struggling. The gatekeeper function of DMHPs leaves families without help. Family members truly know when a loved one is in danger. This bill is a tool for families that gives them standing. A version of this bill passed the House of Representatives last year, and changes were made in response to testimony. For the first 24 hours, the court does nothing with the petition and the DMHP has the opportunity to review their position.

This is not just about money, it is about devastation to families. A man died in the summer of 2013 in the weeks after being discharged from mental health treatment with no follow up. His friends and family did everything they could to get him committed, but were told he did not meet the criteria. Another family lost their daughter when she was shot and killed by her mentally unstable husband. He was taken in for three hours and released. There was no avenue to appeal to the courts with information that only families have.

The demand for mental health services is not being met. Early intervention is key, and community mental health treatment would help avoid incidents. Law enforcement sees in case after case that there is no way to get help to people who are a danger to self or others. This is a highly technical process, and last year the King County Prosecutor's Office created a family advocate petition because there is so much chaos and mystery to the process. Caseloads are up, and there needs to be an evaluation of the mental health infrastructure. This issue should be looked at in the same way as school funding.

(In support with concerns) If judges have to apply the same standard as DMHPs, the outcome will be the same. A better approach would be to lower the current standard for commitment. Scarce beds have to be triaged, and just because someone has an advocate and means for a court proceeding does not mean that person is most deserving of the bed. Under a recently enacted law, family input has to be considered. The effective date of this change was delayed and fatalities occurred. This is a life and death situation that cannot be entirely solved this session. It needs to be worked on every year.

(Opposed) This is not the right mechanism. People should not have to wait until they are so sick they have to commit a violent act to receive treatment. The state has repeatedly loosened the commitment standard when the focus should be on community-based treatment, which is chronically underfunded. It is not always true that if this law had been in place and if people had been committed they would still be alive. A mother committed suicide while awaiting evaluation. Often there is no treatment at all. The state should stop putting money into a system that is failing.

This bill has unintended consequences, including increased paperwork and additional time in court for DMHPs. There is an impression that it is impossible to detain a person, but the facts do not support that. Harborview saw 3,800 cases last year. There has been a 60 percent increase in the past six years. There is also a significant deprivation of liberty at stake, and the interests of family members are not always aligned with the interests of the patient. Family members are often too close to the case, and they are not trained in the law.

Persons Testifying: (In support) Representative Walkinshaw, prime sponsor; Nancy Reuter; Doug Reuter; Dan Satterberg, King County Prosecutor's Office; Gary Kennison; Kristen Otoupalik; and Matthew Hamner.

(In support with concerns) Seth Dawson, National Alliance on Mental Illness.

(Opposed) Mike DeFelice, Washington Defenders Association and Washington Association of Criminal Defenders; and Shankar Narayan, American Civil Liberties Union.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 33 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger, Van Werven and Walkinshaw.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill responds to a tragedy where a young man struggling with a mental illness was shot by the Seattle Police Department when he had a gun in his hand. The parents had tried 48 times to have this young man committed to receive evaluation. This bill allows parents and loved ones to petition the decisions of designated mental health professionals (DMHPs) to re-evaluate decisions made on admissions for treatment.

(In support with concerns) This bill is a modest step in the right direction but does not go far enough. In order to require treatment, the Involuntary Treatment Act (Act) requires that the danger must be "imminent." This standard should be lowered to a "substantial likelihood of danger to self or others." There is an irony in that the more effective the Act is made by allowing for earlier intervention, the more expensive it is.

(Opposed) The involuntary treatment laws in this state are adequate. What is inadequate is the number of beds. Over 90 percent of individuals in the public mental health system have trauma in their background. A study has shown that trauma of this kind impacts people across all economic classes.

Allowing family members to strip a person of their civil and human rights without true due process is unacceptable. The bill does not address the needs of the individual whose civil rights are going to be violated. The bill does not provide for a public defender or advocate for the individual. The fiscal note identifies over \$20 million for involuntary treatment beds but not a penny goes for prevention for the need for these beds in the first place, such as successful peer support services, which are known to work.

This bill would allow a family member to force another family member to take medication. This may actually hurt, rather than help the individual. A lot of these medications have physical and mental side effects. Allowing a family member and judge (who may have no training in this area) to decide what medication someone should take does not make sense.

(Other) The budget proviso from last year specifically requires contracts to pay for certain services but may preclude allowing regional support network funds to pay for some of the costs of DMHPs and court costs.

Persons Testifying: (In support) Representative Walkinshaw, prime sponsor.

(In support with concerns) Seth Dawson, National Alliance on Mental Illness.

(Opposed) Helen Nilon, Behavioral Health and Wellness; and Michael Truog.

(Other) Brian Enslow, Washington State Association of Counties.

Persons Signed In To Testify But Not Testifying: None.