

SENATE BILL REPORT

EHB 1258

As of March 27, 2015

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: Passed House: 1/29/15, 98-0.

Committee Activity: Human Services, Mental Health & Housing: 3/23/15.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Kevin Black (786-7747)

Background: A civil detention under the Involuntary Treatment Act (ITA) must be initiated by a designated mental health professional (DMHP). Under the ITA, a DMHP may detain a person following 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 detention. A personal interview with the person is required unless the person refuses an interview. A DMHP may not initiate 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

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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 it appears the petition is supported by probable cause. The judicial order may be based upon 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 must be provided with appointed counsel or allowed to retain counsel. Before the end of the 72-hour period, the facility providing treatment must release the person or file a petition asking the superior court to authorize continuance of detention for up to 14 additional days, or to commit the person for up to 90 days of outpatient treatment. The court must hold a probable cause hearing to determine whether there is sufficient evidence based on a preponderance of the evidence standard to issue a detention or commitment order. The 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 for evaluation and treatment, or if 48 hours have elapsed since notice to the DMHP and the person has not been detained, an immediate family member or 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, who must within 24 hours either notify the court if the person has been detained or agreed to voluntarily accept appropriate treatment, or provide the court with a written explanation of the basis for the decision not to initiate detention and provide a copy of information collected during the investigation.

If the court finds probable cause to support initial detention, taking into account any information provided by the petitioner, and that the person refused to accept appropriate evaluation and treatment voluntarily, the court may issue an order for initial detention.

The Department of Social and Health Services and each regional support network or agency employing DMHPs must publish information in an easily accessible format describing the process for filing a petition under this act. If a DMHP or the DMHP's agency receives a complaint about a failure to initiate detention, the DMHP or agency must inform the complainant about the petition process under this act.

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

This act may be known and cited as Joel's 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: PRO: This bill will empower family members to seek treatment for loved ones struggling with mental illness. Please amend the bill to allow an attending physician or psychiatrist to also file a petition to challenge a DMHP decision to not detain. We believe in real family involvement in the ITA process. We suggest some changes to improve the bill. The bill needs to be properly funded to maintain response times. We prefer the Senate version between the two bills. There should be clarification as to the time that a family member has to challenge a DMHP decision, and what to do when family members disagree about the need to petition. It is gratifying to see the Legislature sincerely grappling with these tragic situations. Tragedies such as what happened to our son are preventable. We support allowing any person to submit a declaration in support of the petition and allowing the court to review the information before it is submitted to the DMHP. This bill keeps getting better with each revision. Please refer to the language adopted by the House committee

CON: This bill will increase paperwork for DMHPs and force DMHPs to lose time by testifying in court. These costs are not accounted for in the fiscal note. People do get detained in the ITA system, with 10 percent increases in detentions each year. Please amend to require all material related to the petition to be provided to defense counsel. This bill fails on due process by not providing a notification to the person who is the subject of the petition. Please establish safeguards allowing the person to oppose the petition in court. The psychiatric treatment system is ineffective. Psychiatric drugs can be the cause of psychological problems.

Persons Testifying: PRO: Representative Walkinshaw, prime sponsor; David Knutson, WA Osteopathic Medical Assn.; Jim Vollendroff, King County Mental Health and Substance Abuse; Eleanor Owen, Doug Reuter, Nancy Reuter, citizens.

CON: Mike De Felice, King County Dept. of Public Defense; WA Defender Assn., WA Assn. of Criminal Defense Lawyers; Steven Pearce, Citizens Commission on Human Rights.

Persons Signed in to Testify But Not Testifying: No one.