SENATE BILL REPORT
SB 5269

As of January 19, 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: Senators O'Ban, Darneille, Rolfes, Dansel, Miloscia, Pearson, Bailey, Padden, Becker, Frockt, Habib and Pedersen.

Brief History:
Committee Activity: Human Services, Mental Health & Housing: 1/19/15.

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 available treatment records, including records of prior commitment, prior determinations of competency to stand trial or criminal insanity, and any history of violent acts.

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.

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.

Appropriation: None.

Fiscal Note: Requested on January 16, 2015.

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: Our son was killed by the Seattle police in 2013, weeks after being discharged from a hospital without mandatory follow-up treatment. Earlier in his life, with the help of good laws in Arizona, he recovered from episodes of psychosis. Words cannot describe the trauma that mental illness causes for families. Trying to get help for a loved one and being told no is a second trauma. Why do we force people to become so disabled and so sick before helping them? Brain diseases should be treated promptly, like we treat heart disease or cancer. Waiting too long forces people to require a longer period of treatment. Early intervention is key. People have the right to be in their right mind, so they can enjoy their civil liberties. Families can be the key to saving lives. I believe the DMHPs in this state are out of control. They answer to nobody. Under this bill, DMHPs will have a chance to stop the court process by detaining the person within 24 hours. The mental health system is overwhelmed; as a result, individuals get no treatment, or mistreatment, and sometimes lose their lives. This bill would return responsibility for the life of a loved one back into the hands of parents or family members. My son committed suicide two years ago after he wasn't detained by a DMHP. I'm convinced this law will save lives. My son has severe mental illness. It took six weeks to convince a DMHP to commit him. Timely acute care could have shortened his course of treatment by months. A support group told me I should lie to authorities about my son threatening me so that he would get help. The DMHP is the gatekeeper, but the gate isn't at the front door, it's around back with no sign. My brother has severe mental illness. He has been committed more times than I can count, but he has also been denied treatment hundreds of times. My son attempted suicide by cop in 2013 and survived after six weeks of intensive care. We sought treatment for him in California, because Washington is a closed, restrictive, sometimes hostile state for those suffering from mental illness and their families. There are no mental health beds, housing, effective treatment, or cycle of healing for persons who are not homicidal or suicidal. Our son is doing better after a year of residential treatment in California, receiving therapies that are not available in Washington for people who can't afford to private pay. Our state doesn't value a proactive, preventative health care approach. My daughter was murdered by her husband last July in a murder suicide, after he had threatened suicide multiple times but was not detained for mental health treatment. Joel's Law would have given us a tool to protect our daughter. Choose to empower, not victimize, persons with mental illness and their families. I have been fighting with the state and the Veteran's Administration to get help for my son. In Alabama, a family member may petition directly to court for commitment. It should take longer than five minutes to determine if a person has a mental illness. The demand for emergency mental health services in our community far exceeds the capacity. The process too often leaves families without any help at all. This bill is an important step in the right direction; it needs to carry with it your commitment to increase capacity and services for families. There should be amendments considered to help define this process. If we are going to give parents and families standing, we should also give them standards to help them navigate the process. Our senior deputy prosecutor in this area is working with Senate staff to help find ways to make this work effectively. It would be better to change this process to a more therapeutic court model.

CON: We are very sympathetic to the families who are here today. We agree that the system is failing, and that the key is early intervention. We should not wait until someone is a danger to get them mental health treatment, but this bill won't fix that. Involuntary commitment is not the right mechanism, the answer is community-based treatment. Dollars are far more effective when they are spent upstream, where they can save people from

reaching the point of tragedy. In the past, the state has repeatedly loosened the civil commitment standards, but failed to adequately fund pre-commitment and post-commitment treatment, and it doesn't get results. We know that community-based treatment models work. Commitment is a significant deprivation of liberty. It should only occur if there are compelling medical reasons to do so. By substituting the views of elected judges for training mental health professionals, this bill would increase the risk of inappropriate commitment. This bill would cause unintended consequences by taking DMHPs off the street. DMHPs would have to do more paperwork to justify their decisions and be called into court more often, as defense witnesses to explain why their investigation did not support detention. This bill creates the impression that it is impossible to get a person detained, but this is not the case. The involuntary treatment court in King County handled 3800 commitment cases last year. The number of cases has grown 60 percent in recent years. People are getting detained. DMHPs are trained to be impartial and know the law, not to be governed by passions. Olympia must restore funding for community outpatient treatment, so that we can prevent persons from coming into the involuntary commitment arena.

OTHER: We support this bill with concerns. We would prefer to see the commitment standard lowered from requiring imminent danger to a substantial likelihood. Expanded commitments must come with funding for expanded beds. We cannot continue to delay; we must do the best we can right now and continue working until things improve.

Persons Testifying: PRO: Nancy Reuter, Doug Reuter, Sarah Hutchins, Kathleen Chandler, Gretchen Allen, Mendy Masserang, Walt Stawicki, Jennifer Knapp, Mary Jane Thomas, Gary Kennison, Kristen Otouopaslkik, Barbara Pedraza, Steve Johnson, citizens; Dan Satterberg, King County Prosecuting Attorney.

CON: Shankar Narayan, American Civil Liberties Union of WA; Mike De Felice, WA Defender Assn., WA Assn. of Criminal Defense Lawyers.

OTHER: Seth Dawson, National Alliance on Mental Illness.