

HOUSE BILL REPORT

SSB 6124

As Reported by House Committee On: Judiciary

Title: An act relating to clarifying that court hearings under the involuntary commitment act may be conducted by video.

Brief Description: Clarifying that court hearings under the involuntary commitment act may be conducted by video.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Dhingra, Palumbo, Mullet, Frockt, Takko, Darneille, Rolfes, Billig, Cleveland, Kuderer, Wellman, Carlyle, Ranker, Hasegawa, Saldaña, Nelson, Keiser, McCoy, Van De Wege, Chase and O'Ban).

Brief History:

Committee Activity:

Judiciary: 2/22/18 [DP].

Brief Summary of Substitute Bill

- Defines "hearing" in the Involuntary Treatment Act as any proceeding conducted in open court.
- Allows parties in a proceeding to participate either in person or video, subject to certain limitations.

HOUSE COMMITTEE ON JUDICIARY

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

Staff: Ingrid Lewis (786-7289).

Background:

A person may be committed by a court for involuntary mental health treatment under the

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Involuntary Treatment Act (ITA) if he or she, due to a mental disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient treatment.

Generally, the commitment cycle begins with an initial evaluation period of up to 72 hours at an evaluation and treatment facility (E&T facility) initiated by a designated mental health professional (DMHP). In emergency cases, a DMHP may detain a person without a court order if the likelihood of serious harm or grave disability is imminent. In nonemergency cases where the likelihood of serious harm or grave disability is not imminent, a DMHP may detain a person only upon a court order.

Within the initial 72-hour evaluation period, the professional staff of the E&T facility may petition the court to have a person committed for further mental health treatment. Following a hearing, the court may order the person to be involuntarily committed for up to 14 days of additional treatment. Upon subsequent petitions and hearings, a court may order up to an additional 90 days of commitment at a state hospital, followed by successive terms of up to 180 days of commitment.

A person subject to a petition for involuntary treatment is afforded a variety of rights. At a probable cause hearing the person has the following rights:

- to present evidence on his or her behalf;
- to cross-examine witnesses who testify against him or her;
- to be proceeded against by the rules of evidence;
- to remain silent; and
- to view and copy all petitions and reports in the court file.

Beginning April 1, 2018, the ITA is expanded to include commitments for substance use disorders (SUD). A person who meets criteria for involuntary SUD treatment may be detained and committed to a secure detoxification facility or an appropriate SUD treatment program, subject to bed or program availability. Substance use disorder commitments will follow the same procedures, rights, requirements, and timelines as mental health commitments.

Summary of Bill:

"Hearing" is defined as any proceeding conducted in open court. In a hearing pursuant to the Involuntary Treatment Act, the petitioner, the person subject to the petition for involuntary treatment, witnesses, and the presiding judicial officer may participate either in person or by video, provided that: (1) all parties are able to see, hear, and speak during the hearing; (2) attorneys are able to use exhibits and other materials; and (3) the attorney for the person subject to the petition is in the same location as the person, unless otherwise requested by the person or the attorney. Telephonic testimony by witnesses is permitted, pursuant to Superior Court Rules.

The court may require all parties to participate in person upon its own motion or motion for good cause by any party. The court may consider whether the person's mental illness affects the person's ability to perceive or participate in the proceeding by video.

The term "video" includes any functional equivalent.

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) King County has been conducting video hearings since 2015, due to an inability to transport patients by ambulance. A survey of respondents in the proceedings found that respondents either preferred a video hearing or did not notice a difference.

This bill changes the statute to give the court the discretion to allow a video hearing. It does not mandate or require video testimony. An individual can appear in person upon a motion made by the court or counsel. The goal is to do the best thing for the patient based on his or her condition at the time of the hearing. Respondents in 90- and 180-day hearings have to be transported by gurney and are in five-point restraints from the time they are put in an ambulance to travel to the proceeding, and they remain restrained during the proceeding. Conducting hearings using video allows persons to be in their room and affords them continuity of care. Defense attorneys are able to mute microphones when in the client's interests.

There is no constitutional violation based on the recent court of appeals decision. The court of appeals in deciding that people had to be present at a hearing did not base the decision on due process grounds. The decision was based on the language in the statute that required that the respondent must be present. The dissent stated that the language could not have contemplated technological advances.

This change will help family members participate in proceedings, as witnesses can appear telephonically if civil rules are followed. Psychiatrists with a clinical practice would have more time to spend with patients instead of travelling for a hearing.

(Opposed) This bill is unfair and unnecessary in that it treats the mentally ill differently. If a lawsuit is filed over a property line dispute or if a person contests a divorce, that person has a right to face the judge and be in the same courtroom as the judge. This bill bars a person's right to be physically present in the court room when a judge determines their liberty interest. Currently, clients have a right to be present in person or by video. The system should remain the same.

Persons Testifying: (In support) Senator Dhingra, prime sponsor; Ken Schubert, Superior Court Judges Association; Ian Goodhew, University of Washington Harborview Medical Center; and Seth Dawson, Washington State Psychiatric Association.

(Opposed) Mike De Felice, Washington Defender Association, Washington Association of Criminal Defense Attorneys, and King County Department of Public Defense.

Persons Signed In To Testify But Not Testifying: None.