SENATE BILL REPORT
SB 5706

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, February 15, 2017

Title: An act relating to parent-initiated behavioral health treatment for children aged thirteen to seventeen years old.

Brief Description: Addressing parent-initiated behavioral health treatment for children aged thirteen to seventeen years old.

Sponsors: Senators Becker, Rivers, Bailey, Brown, O'Ban, Fortunato and Warnick.

Brief History:
Committee Activity: Human Services, Mental Health & Housing: 2/13/17, 2/15/17 [DPS, DNP].

Brief Summary of Substitute Bill

- Provides that a parent must be considered the personal representative of a child admitted for parent-initiated behavioral health treatment for the purpose of the evaluation and course of follow-up treatment.
- Provides that an evaluation for outpatient parent-initiated behavioral health treatment must include a determination of medical necessity and, if the provider so finds, the provider must collaborate with the parent to determine a course of outpatient treatment for the minor.
- Provides liability protection for the behavioral health provider based on sharing of information related to parent-initiated treatment.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5706 be substituted therefor, and the substitute bill do pass.
Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Padden and Walsh.

Minority Report: Do not pass.
Signed by Senators Darneille, Ranking Minority Member; Carlyle and Hunt.

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: Kevin Black (786-7747)

Background: Minors may access behavioral health treatment in Washington through three portals: minor-initiated treatment, parent-initiated treatment, and involuntary commitment.

Age of Consent. Age of consent is a term which refers to a cluster of laws which modify Washington's general age of majority, which is 18 years of age, for the purposes of making health care decisions. While 18 remains the age of majority for most health care decisions, state law carves out discrete areas for a lower age of consent. The age of consent for inpatient or outpatient mental health treatment is 13, the age of consent for outpatient substance use disorder treatment is 13, the age of consent for testing for sexually transmitted diseases is 14, and a person of any age may consent to reproductive health services.

Medical Privacy Laws. Health information is protected from disclosure by both federal and state privacy laws. The age at which these privacy laws is applied is determined by the age of majority under state law. The federal Health Insurance Portability and Accountability Act (HIPAA) protects health information starting at age 18, but an exception applies when the minor is the one who consents to care and the consent of the parent is not required under state law. This exception effectively applies HIPAA to children starting at age 13 in Washington with respect to information pertaining to behavioral health treatment, although HIPAA does not apply to other forms of health information subject to a different age of majority until that age of majority is attained.

Personal Representative. Personal representative is a term recognized in federal law to refer to a person authorized to act on behalf of an individual in making health care related decisions. A parent is considered to be the personal representative of a minor who is below the applicable age of majority. A personal representative has the same access to health information and records as the individual with the exception of psychotherapy notes, which are excluded from disclosure without specific authorization. Psychotherapy notes are notes reflecting the contents of conversations during private counseling or group or family sessions that are separated from the individual's medical record.

Minor-Initiated Treatment. Minor-initiated treatment is voluntary treatment related to behavioral health authorized by a minor aged 13-17 years old. Health information related to minor-initiated treatment may not be shared without the consent of the minor. In certain circumstances, state law requires notice of admission to treatment to be provided to the minor's parents. A minor may not consent on the minor's own behalf to inpatient substance use disorder treatment until April 1, 2018.

Parent-Initiated Treatment - Inpatient. Parent-initiated treatment is a legal framework under state law which allows a parent to consent to behavioral health treatment on behalf of a minor aged 13-17 years old, despite the age of consent law. Parent-initiated treatment begins when a parent brings their minor child, or authorizes their child to be brought, to an inpatient treatment facility. At the request of the parent, a professional person in charge of the facility may admit the minor for evaluation for up to 24 hours without the consent of the minor. If, as a result of the evaluation, the professional person determines that it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment and the facility must notify the Department of Social and Health Services (DSHS). If treatment for

the minor continues, an independent physician designated by DSHS must review the finding of medical necessity not less than seven nor more than 14 days after the minor's admission. If continuing medical necessity is confirmed by the independent review, the minor must receive a notice of legal rights and be afforded the opportunity to petition the superior court for their release. If the minor is not released by the superior court, and continues to not consent to treatment, the facility must release the minor no later than 30 days following the independent review or the filing of a court petition, whichever comes later. A facility is required to notify parents of their right to request parent-initiated treatment for their minor child or face a civil fine. Records retained by DSHS indicate that statutes authorizing parent-initiated inpatient treatment, although enacted by the Legislature in 1998, were rarely used prior to 2012. In the years 2014-2016, an average of 385 children per year were admitted for inpatient mental health treatment under the parent-initiated treatment statutes, constituting somewhat less than one-third of all child admissions for inpatient mental health treatment during this period.

Parent-Initiated Treatment - Outpatient. A parent may bring their minor child to a provider of outpatient behavioral health treatment and request an evaluation to determine whether their child has a behavioral health disorder and is in need of outpatient treatment. According to DSHS, no records exist at the state level that would reveal the extent to which this provision is used.

Involuntary Commitment. A child aged 13 to 17 who does not consent to voluntary mental health treatment may be committed for involuntary mental health treatment by a designated mental health professional (DMHP) if the DMHP finds, after investigation, (1) that the child has a mental disorder, (2) as a result of the mental disorder the child either presents a likelihood of serious harm or is gravely disabled, (3) there is no less restrictive alternative which can meet the needs of health and safety, and (4) the DMHP can locate a certified evaluation and treatment facility bed or a bed that can be certified for involuntary treatment pursuant to a single-bed certification.

Integration of Behavioral Health Statutes. Pursuant to legislation enacted in 2016, statutes pertaining to treatment for mental health disorders and substance use disorders will be integrated into a single set of statutes pertaining to treatment for behavioral health disorders effective April 1, 2018. Some technical differences exist in statutory provisions related to parent-initiated treatment and parental notification for mental health disorders and substance use disorders which will be eliminated when these statutes are unified on April 1, 2018.

Summary of Bill (First Substitute): A parent who requests parent-initiated behavioral health treatment for a minor must be considered the personal representative of the minor for the purpose of transmission of medical information, making treatment decisions, and reviewing the compliance of the minor with treatment recommendations if the minor is accepted for evaluation or treatment and treatment is medically necessary, unless:

- the parent agrees to a confidential relationship between the minor and the health care provider; or
- the receipt of new information or a material change in circumstances causes the provider to reevaluate the medical necessity for treatment under the parent-initiated treatment statutes.

The health care provider is not required to make disclosures to the parent which would, in the judgment of the provider, place the minor at risk of harm. No health care provider is required to enter into a treatment relationship. The parent's right of information does not include a right of access to psychotherapy notes. Age of consent statutes relating to behavioral health treatment are suspended for the limited purpose of the parent-initiated behavioral health treatment evaluation and course of follow-up treatment. Disclosure of a minor's substance use disorder treatment information is not authorized to the extent that this disclosure is prohibited under federal law.

When a parent requests an outpatient parent-initiated behavioral health treatment evaluation from a provider and the provider accepts the minor for evaluation, the provider must determine during the evaluation whether there is a medical necessity for the minor to receive outpatient behavioral health treatment. If the provider so finds, the provider must collaborate with the parent to determine a course of treatment for the minor.

A health care provider is not liable for communications with a parent under the parent-initiated treatment statutes.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE (First Substitute):

- Provides that disclosure of a minor's substance use disorder treatment information is not authorized to the extent the disclosure is prohibited by federal law.
- Adds definition of personal representative

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Three years ago, a CPS investigator threatened our family with filing an at-risk youth petition or foster care because of family violence and my children's lack of cooperation with treatment. Because we had the means, I was able to obtain out-of-state residential treatment for my children where they allow the parents to be in control. If we had not done this, my son was headed towards prison and my daughter was at risk of exploitation by male predators. We don't need a study to understand that the state enables children to defy their parents. Protection of a child's right to seek treatment should not come at the cost of taking away caring parents' ability to make medically necessary behavioral health decisions. This is an incremental step, but gives us a chance to test whether parents can be helpful or harmful to kids. My son would never ever have gotten treatment if it was up to him alone; now he has graduated from high school with a greatly improved grade point average. This bill corrects a significant discrepancy between the stated intent of the children's mental health law and its provisions. This will help parents exercise reasonable, compassionate control of their children when there is a medical

necessity for care. Kids implicitly rely on and expect the involvement of their parents in decision-making, especially when they are experiencing a neurological condition or substance abuse. One of the most important jobs of a parent is to keep their kids safe. This bill will help them do that. Allowing a kid to say no to treatment makes a bad situation worse.

CON: I remember the parent-initiated treatment process being established because of the legitimate concerns of parents not being able to access treatment for their children. Fortunately use has increased over time. This legislation runs into a lot of very controversial areas. We advocate a process over the interim for stakeholders to come together to try to solve this. We need to get to a place where the parent-initiated treatment process works for children and parents in a variety of situations.

OTHER: There is a conflict with federal law related to sharing of information related to substance use disorder treatment. We are otherwise supportive of the bill and of parent-initiated treatment in general. This is an issue we should examine closely to sort out the legal and policy issues. It would be a better project for next year after stakeholders have had a chance to come together.

Persons Testifying: PRO: Peggy Dolane, citizen; Drew Dolane, citizen; Ron Jaeger, citizen.

CON: Laurie Lippold, Partners for Our Children.

OTHER: Lisa Thatcher, WA State Hospital Assn.; Seth Dawson, WA Assn. for Children & Families.

Persons Signed In To Testify But Not Testifying: No one.