SENATE BILL REPORT
SB 5720

As of January 28, 2020

Title: An act relating to the involuntary treatment act.

Brief Description: Concerning the involuntary treatment act.

Sponsors: Senators Dhingra, Wagoner and Kuderer.

Brief History:

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 2/01/19.

Brief Summary of Bill

- Increases initial detention under the Involuntary Treatment Act (ITA) from 72 hours to five days, excluding weekends and holiday.
- Modifies definitions of likelihood of serious harm and gravely disabled under the ITA.
- Expands single-bed certifications to include patients detained due to a substance use disorder.
- Applies certain ITA provisions relating to adults to minors.
- Makes additional revisions to ITA provisions.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Staff: Kevin Black (786-7747)

Background: Involuntary Treatment Act Procedures. A commitment under ITA begins with a designated crisis responder (DCR) investigation. A person may be held in a facility for up to 12 hours for a DCR investigation, provided that they must be examined by a mental health professional within three hours of arrival, not counting time periods prior to medical clearance. The DCR must determine whether the person has a mental disorder or substance use disorder which causes the person to present a likelihood of serious harm or to be gravely disabled. If the DCR so finds, the DCR must determine whether the person is willing to

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.

accept voluntary treatment and whether the person's needs can be served in a less restrictive alternative (LRA) to inpatient detention. If these conditions are not met, the DCR may detain the person for up to 72 hours to an evaluation and treatment facility (E&T) or secure detoxification facility (secure detox), excluding weekends and holidays.

For detention to continue past the end of the 72-hour period, a probable cause hearing must be held in superior court. By making appropriate findings, the court may authorize up to 14 additional days of involuntary treatment. The person must have access to appointed counsel and be afforded a panoply of due process rights. For detention to continue past the 14-day period, the person must be provided notice of a new petition at a trial setting hearing and be afforded the right to a jury trial. The subsequent detention period, if authorized, is 90 days for adults or 180 days for minors. At any time in which the person's need may be met in an LRA, the person must be released from detention, but may be ordered to comply with conditions.

ITA Definitions. "Likelihood of serious harm" is a ground for involuntary commitment which means a substantial risk that:

- physical harm will be inflicted by a person upon themselves, as evidenced by threats or attempts to commit suicide or inflict physical harm on themselves;
- physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person in reasonable fear of sustaining such harm;
- physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage; or
- the person has threatened the physical safety of another and has a history of one or more violent acts.

"Gravely disabled" is a ground for involuntary commitment which means that the person:

- is in danger of serious physical harm resulting from a failure to provide for their essential human needs of health or safety; or
- manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health and safety.

Single Bed Certifications. A single-bed certification is a temporary certification to provide involuntary treatment services in a facility or section of a facility which is not normally certified to provide involuntary services. To receive a single-bed certification, a facility must attest that they are willing and able to provide timely and appropriate mental health treatment, either directly or by arrangement with other public or private agencies. Single-bed certifications may be sought for a variety of purposes, including providing for medical needs that cannot be met in a certified facility, facilitating continuity of care, providing involuntary care in a normally voluntary psychiatric setting, and based on a lack of availability of certified involuntary treatment beds. Single-bed certifications are available for patients who are detained based on a mental disorder, but are not available for patients detained based on a substance use disorder.

Nonfelony Flip Patients. A person who is released from jail following dismissal of nonfelony charges based on incompetency to stand trial may be referred for an involuntary commitment

evaluation within 48 hours, or directly detained to an E&T, depending on the seriousness of the offense. If the person is not subsequently detained, the DCR or facility must present the decision to not detain to the superior court, which must hold a review hearing. In some permutations of this complex statute, a surety hearing must be ordered in circumstances where the court has overridden the decision of the treatment facility or DCR.

Involuntary Medication. A facility may provide involuntary medication during a period of detention for involuntary treatment only in a lifesaving emergency situation or by following certain procedures. For short-term hospitalizations under 30 days, the facility must have attempted and failed to obtain the informed consent of the person and there must be a concurring medical opinion by a professional with prescribing authority. For patients in long-term detention, a petition must be filed to obtain a court order alleging a lack of medically acceptable alternatives that are likely to be successful.

Provisions in Adult Involuntary Treatment Act That Do Not Correspond to Provisions in Involuntary Treatment Act for Minors. The ITA for adults contains a number of provisions which do not appear in the ITA for minors, which is embodied in a separate chapter of the Revised Code of Washington. These provisions include:

- Joel's Law, which provides specific procedures allowing a family member, guardian, or conservator of a person to appeal the decision of a DCR to not detain an individual for review in superior court;
- intent provisions emphasizing strong consideration of a prior behavioral health history during commitment decisions and a substantive provision that requires DCRs to consider information from all credible witnesses and to construe current symptoms and behavior in conjunction with historical behavior when analyzing grave disability;
- intent provisions instructing the courts to focus on the merits of involuntary commitment petitions except when procedural requirements have been totally disregarded, referencing the *parens patrie* and police powers of the state, and substantive provisions stating that dismissal is not the appropriate remedy for violations of certain timeliness requirements except where those requirements have been totally disregarded;
- mandatory components of LRA treatment which must be provided by community behavioral health agencies to persons who are court-ordered to receive LRA treatment;
- authorization for a peace officer to take a person into custody and deliver them to an appropriate triage facility, crisis stabilization unit, E&T, secure detox, approved substance use disorder treatment program, or emergency department based on reasonable cause to believe the person is detainable under the ITA;
- authorization for a peace officer to detain a person who has been arrested for up to eight hours at an E&T, secure detox, or approved substance use disorder treatment program for consideration of admission to a treatment program instead of further criminal justice proceedings;
- the right to an inventory of possessions upon entry into involuntary detention, which must be provided to the detained person so that possessions may be safeguarded;
- a duty to warn or take reasonable precautions to protect others from violent behavior, which the facility may discharge by reasonable efforts to communicate the threat to a victim or victims and law enforcement personnel; and

- authorization for a facility to allow a person who is detained for treatment to leave the facility for temporary periods under appropriate conditions.

Summary of Bill: The period of initial detention under the ITA is increased from 72 hours to five days, excluding weekends and holidays.

The definition of likelihood of serious harm is expanded to include a risk of physical harm evidenced by harm, physical pain, or trauma which places a person in reasonable fear of harm to themselves or others.

The definition of gravely disabled is modified to change "manifests severe deterioration in routine functioning" to "manifests severe deterioration from safe behavior." Severe deterioration from safe behavior is defined to mean that the person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress associated with significant impairment of judgment, reason, or behavior.

Single-bed certifications are expanded to include authority to authorize a single bed certification for a patient who is detained based on a substance use disorder as well as a mental health disorder.

Interpreters in an involuntary commitment hearing may appear by video, unless the court on its own motion or for good cause requires all parties and witnesses to appear in person.

A court may authorize involuntary medication as part of an LRA order if the person was provided with involuntary medication during the involuntary commitment period. The LRA provider must have attempted and failed to obtain informed consent of the person and there must be a concurring medical opinion by a psychiatrist, physician, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician assistant working with an independent mental health professional with prescribing authority.

A court order for a peace officer to detain a person for involuntary treatment must be entered into the Washington Crime Information Center database as a written order of apprehension.

References to mental disorders and substance use disorders are changed to behavioral health disorders.

The definition of violent act used in analyzing a person's history of one or more violent acts is expanded to include behavior that results in injury, pain, or substantial loss of property.

The three-hour examination required when a person is held for investigation for detention under the ITA must be performed by a mental health professional or a chemical dependency professional, whichever is more appropriate to the person's presentation.

An E&T, in addition to the DCR, may file with the court and serve a petition for initial detention for involuntary treatment.

A pair of surety hearing processes are eliminated when superior court reviews the failure of a facility to detain a person who has been released from jail after the dismissal of serious nonfelony charges based on incompetency to stand trial.

Time limitations on continuances in ITA hearings are repealed. Involuntary commitment hearings may be continued for good cause or as required in the proper administration of justice, if the respondent consents or will not be substantially prejudiced.

A facility may show that a person is not volunteering in good faith to accept treatment by demonstrating that the person has failed to abide by the procedures or a treatment plan prescribed by the facility and its professional staff.

A person transported to a state hospital for commitment after dismissal of felony charges based on incompetency to stand trial may be subject to a petition for 90-days of involuntary treatment on grounds of likelihood of serious harm or grave disability, in addition to 180-day treatment under current legal provisions.

A requirement is repealed for a committed person to appear in person before the court to receive notice of a trial setting for a 90-day or 180-day involuntary treatment petition.

A court, in addition to a party, may request a modification to an LRA order. The LRA revocation period is clarified to consist of 14 days if it follows a probable cause hearing or period of assisted outpatient behavioral health treatment and otherwise the number of days left until expiration of the LRA order.

A facility may deny a minor's access to an attorney during the initial detention period only if there is an immediate risk of harm to the minor or others.

The time frame to file a 180-day petition for additional treatment of a minor is shortened to three days, instead of five days, before the end of the current commitment period.

Involuntary treatment courts are recognized as therapeutic courts.

Various provisions from adult ITA are imported into minor ITA and applied to persons under eighteen years of age:

- Joel's Law, which provides specific procedures allowing a family member, guardian, or conservator of a person to appeal the decision of a DCR to not detain an individual for review in superior court;
- intent provisions emphasizing strong consideration of a prior behavioral health history during commitment decisions and a substantive provision that requires DCRs to consider information from all credible witnesses and to construe current symptoms and behavior in conjunction with historical behavior when analyzing grave disability;
- intent provisions instructing the courts to focus on the merits of involuntary commitment petitions except when procedural requirements have been totally disregarded, referencing the *parens patrie* and police powers of the state, and substantive provisions stating that dismissal is not the appropriate remedy for violations of certain timeliness requirements except where those requirements have been totally disregarded;

- mandatory components of LRA treatment which must be provided by community behavioral health agencies to persons who are court-ordered to receive LRA treatment;
- authorization for a peace officer to take a person into custody and deliver them to an appropriate triage facility, crisis stabilization unit, E&T, secure detox, approved substance use disorder treatment program, or emergency department based on reasonable cause to believe the person is detainable under the ITA;
- authorization for a peace officer to detain a person who has been arrested for up to eight hours at an E&T, secure detox, or approved substance use disorder treatment program for consideration of admission to a treatment program instead of further criminal justice proceedings;
- the right to an inventory of possessions upon entry into involuntary detention, which must be provided to the detained person so that possessions may be safeguarded;
- a duty to warn or take reasonable precautions to protect others from violent behavior, which the facility may discharge by reasonable efforts to communicate the threat to a victim or victims and law enforcement personnel; and
- authorization for a facility to allow a person who is detained for treatment to leave the facility for temporary periods under appropriate conditions.

Provisions delineating the rights of detained persons are harmonized between the adult and minor ITA chapters. Language is stricken providing that the Rules of Evidence do not apply during a minor's probable cause hearing. The venue for the detention or revocation hearing of a minor must be in the county where treatment is being provided. Technical corrections are made.

Appropriation: None.

Fiscal Note: Requested on January 28, 2019.

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: PRO: This bill came about from conversations with stakeholders over many years. The intent is to put patient care first and foremost. Decision-making should be in the hands of the medical community, instead of ITA lawyers. The money to pay the lawyers comes from treatment dollars and should go to treatment, not unnecessary court hearings. The majority of the changes make sure we say behavioral health instead of mental health or substance use disorder because when the patient presents in the emergency room, you should treat the individual holistically and build a plan and care model that is based on the individual's needs. When we amend the adult ITA we often forget about juvenile ITA but we need the same provisions in both places. Some people wanted a ten-day period for initial detention. Current 72-hour hearings are frequently continued. I am not sure if increasing the initial detention period will increase or decrease detentions. After five days, a person may not meet the criteria for further civil commitment. The hospitals always have the ability to discharge before the hearing. We would like to see the state not have the need for single bed certification, but the demands of Ricky's law stretch our current capacity. Almost half of statewide commitment cases take place in King County because we receive

patients from all over the state. We have crowded dockets and it is chaos up there, which does not produce justice or good patient care. Extending initial detention will cause fewer 14-day petitions to be filed. Right now filing happens in 92 percent of cases, in part because there is no time to figure out other options. Forty percent of patients continue the case at the first hearing, for an average of 11-12 days. They want more time to make a decision whether to challenge their hospitalization. Cases that transfer to King County have even less time for careful patient evaluation. Other states have longer initial detention periods—15 days, 10 days, and other lengths. The definition change for harm to others will improve community safety. Appellate courts do not recognize threats of harm to others as part of likelihood of serious harm. Parents can not testify about threats to young children who are unable to testify for themselves. The new definition is aligned with the definition in the criminal harassment statute. The proposed definitions are clear and modelled on recommendations from other states. Allowing a facility to file commitment paperwork is important when the patient transfers from another county and the original DCR is not available to perform these tasks. This bill is very helpful procedurally, and will help DCRs respond to the needs of persons in the community. It creates flexibility to place and treat persons with co-occurring disorders in a variety of settings without having to be on a rigid track. The definitions reflect a more up-to-date understanding of trauma. We need funding to support services and interventions, including resources for diversion and discharge so that ITA can remain a last resort intervention. Please delay the expansion of single-bed certifications until 2026 to allow for the development of additional secure detox capacity. ITA law requires urgency and danger, but the system is not designed to respond with urgency. How the law is administered matters as much as the wording. Three days is not long enough to figure out a treatment plan, arrange housing, or anything that would lead to lasting stability. My son was committed in Oregon where they have a five-day initial commitment and the extra two days helped. The current gravely disabled standard is too difficult to grasp. Sometimes critically ill persons require merciful treatment. Any new legislation needs to include accountability and funding. It will cost more to help more people. My son was helped through the ITA system. Five days would give more time for new medications to take effect, for the patient to get used to them, and give more time for families to communicate with the court system. Eleven states currently have initial detention holds of five days or longer.

CON: Capacity is the underlying issue with the ITA system. Five days with the weekend becomes a week, so it is a 66 percent increase in loss of liberty. This will increase pressure on psychiatric beds and move in the wrong direction for civil liberties. Single-bed certifications will increase people will be in the wrong kinds of beds. "Deterioration from safe behavior" is vague. Forced medication in the community means being held down and having a needle forcibly injected. In a hospital it happens in a controlled environment with trained professionals. In the community, the person could be on illicit drugs that may have a negative interaction with the medication. "Causing trauma" is too vague for expanding the definition of harm. Any act that "results in pain" is overreach. Many people go without treatment not because of the standards, but because the beds are not there. Five days is just longer to sit in a single-bed certification if capacity is not there. Questions of justice and rights need to be recognized alongside other considerations. People who are directly impacted need to be included in these discussions. I was traumatized during my first involuntary commitment, and have been hospitalized in other states. Peers do not want force. Work with us, and we might be more accepting of services. When you take away rights it is a runaway train that leads to more rights being taken away.

OTHER: Single-bed certification for substance use disorder is a cause for concern. The clinical needs are different compared to mental health. Patients need detox and counselling services that are not available in an acute care hospital. Large numbers of single-bed certifications indicate failure to meet the needs we already face. Facilities should not be given the responsibility of filing petitions using ambiguous language. Our members have opposing views around the extending initial detention to five days. Three days could be kept as the default position with the possibility of an extension. Do not classify ITA courts as therapeutic courts because therapeutic courts are voluntary and very different. National therapeutic court standards do not match ITA practices. Caseload is a problem in King County—any help with it will be appreciated. The number of filings goes up 5 percent every year.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Anne Mizuta, King County Prosecuting Attorney's Office; Melanie Smith, NAMI Washington; Diane Swanberg, King County; Barb Olsen, citizen; Jerri Clark, Mothers of the Mentally Ill.

CON: Mike De Felice, King County Department of Public Defense, Washington Defender Association, Washington Association of Criminal Defense Lawyers; David Lord, Disability Rights Washington; Laura Van Tosh, citizen.

OTHER: Len McComb, Washington State Hospital Association; Steve Rosen, Superior Court Judges Association, King County Superior Court; Bob Cooper, Washington State Association of Drug Courts.

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