SENATE BILL REPORT
SSB 5073

As Amended by House, April 7, 2021

Title: An act relating to improving involuntary commitment laws.

Brief Description: Concerning involuntary commitment.

Sponsors: Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Dhingra, Das, Kuderer, Salomon, Warnick and Wilson, C.).

Brief History:

Committee Activity: Health & Long Term Care: 1/13/21 [w/oRec-BH].
Behavioral Health Subcommittee to Health & Long Term Care: 1/15/21, 1/22/21 [DPS].

Floor Activity: Passed Senate: 2/3/21, 47-2.
Passed House: 4/7/21, 87-10.

Brief Summary of First Substitute Bill

- Expands the authority of a designated crisis responder (DCR) to conduct a civil commitment investigation by video to include investigations involving an adolescent.
- Expands minimum requirements for less restrictive alternative treatment.
- Requires DCRs to attempt to ascertain whether a person being investigated for civil commitment has executed a mental health advance directive.
- Authorizes courts to provide periodic monitoring patients for ordered to receive involuntary outpatient treatment and to modify the terms of their commitment orders.

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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 5073 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Frockt, Nobles and Warnick.

Staff: Kevin Black (786-7747)

Background: Involuntary Commitment for Behavioral Health Treatment. Involuntary commitment occurs when a court orders a person to undergo a period of involuntary behavioral health treatment. Involuntary treatment may occur in an inpatient setting, or it may consist of a period of outpatient treatment, which is known as less restrictive alternative (LRA) treatment. Washington law refers to orders requiring LRA treatment as LRA treatment orders, conditional release orders, or assisted outpatient behavioral health treatment orders. The term conditional release order may apply to a person committed under civil treatment statutes applicable to persons found to present a likelihood of serious harm or to be gravely disabled due to a behavioral health disorder, or to persons committed under forensic treatment statues following acquittal of criminal charges based on a finding of not guilty by reason of insanity.

Minimum Components of Less Restrictive Alternative Treatment. In 2016, the Legislature established mandatory minimum components for a course of LRA treatment under civil treatment statutes. These include:

- assignment of a care coordinator;
- a psychiatric evaluation;
- a schedule of regular contacts with the treatment provider;
- a transition plan;
- an individual crisis plan; and
- notification to the care coordinator when the client does not substantially comply with treatment requirements.

Other optional LRA treatment requirements were specified. Subsequent to this enactment, involuntary commitment laws were expanded to encompass commitments based on an underlying substance use disorder in addition to commitments based on an underlying mental health disorder.

Civil Commitment Evaluations by Video. Involuntary commitment under civil treatment statutes must be initiated by a designated crisis responder (DCR) following an investigation. In 2020, laws were amended to allow DCRs to investigate adults for involuntary commitment using a video interview, provided that a health professional is present with the adult during the interview. The same authority was not extended to civil commitment investigations of adolescents.

Mental Health Advance Directives. A mental health advance directive is a legal document declaring a person's preferences in the event that the person becomes incapacitated due to a

mental health disorder. In this circumstance the mental health advance directive may appoint another person to make decisions on their behalf. Washington State's mental health advance directive law was enacted in 2003.

Types of Civil Involuntary Commitment Facilities. Washington law establishes two types of licensed involuntary treatment facilities for civil patients: evaluation and treatment facilities (E&Ts) which specialize in treating patients with mental health disorders, and secure withdrawal management and stabilization facilities (SWMS), which specialize in treating patients with substance use disorders. A facility may be licensed as a co-occurring disorder treatment facility specializing in treatment of all kinds of behavioral health disorders. If following a person's judicial commitment to an E&T or SWMS it appears that the person would be better served by treatment at the other kind of facility, the facility may refer the patient for placement at the more appropriate facility.

Summary of First Substitute Bill: A DCR may conduct an involuntary commitment interview for an adolescent by video, provided that a health professional who can adequately assist the adolescent is present at the time of the interview. This provision is subject to an emergency clause and effective immediately.

Minimum requirements for a program of LRA treatment are modified by allowing a substance abuse evaluation to be provided instead of, or in addition to, a mental health evaluation and by requiring consultation about the formation of a mental health advance directive. A care coordinator may disclose information related to LRA treatment to implement involuntary commitment proceedings.

A DCR must attempt to ascertain whether a person under investigation for civil commitment has executed a mental health advance directive. A transfer of a patient detained for involuntary treatment between an E&T or SWMS facility may take place at any time following the patient's initial examination and evaluation.

A court may conduct periodic review of the progress of a person on an LRA or conditional release order, modify the terms of the order, and take certain actions. The length of the conditional release period is clarified. The definition of less restrictive alternative for an adolescent is altered to explicitly include residential treatment outside an inpatient hospital setting. Terminology is changed from written orders of apprehension to warrants; and from drug abuse, substance abuse, and alcoholism to substance use disorder. Technical language updates and changes are made.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates, including sections subject to an emergency clause that are effective immediately.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: This bill came about from meetings with stakeholders to look at barriers to implementation of Ricky's Law. I support making our laws clear so that all parties understand how the law is supposed to work. The changes to the Ricky's Law allows the law to support treatment team recommendations, and will allow transfer between specialty facilities for mental health and substance use disorders. The King County Recovery Pilot Project provides an enhanced LRA to support patients who need an enhanced level of supervision. The pilot was inspired by data showing about a third of patients failing on LRAs and returning to the hospital floridly psychotic within 90 days. We offer enhanced services, housing support, peer support, treatment plans with patient input and a patient-centered approach, and periodic court monitoring to praise recovery achievements and solve problems in real time. This model has been used successfully in other states. Our son has a serious mental illness. His LRA did not amount to much. He talked to someone a few times, but soon got off his medication. It was like checking in with a parole officer. The Program for Assertive Community Treatment program saved his life, and maybe ours. If something was done earlier to give him treatment, there would be a lot of savings.

CON: This bill expands the function of Involuntary Treatment Act courts, imposing additional burdens on persons and therefore barriers to recovery. It increases the length of commitment. Reporting to a corrections officer is triggering to many persons. Instead please convene a task force to improve court oversight. We support the mental health advance directive component, which may reduce reliance on the involuntary treatment system. Involuntary commitment is a severe deprivation of liberty. We need provisions to protect individuals experiencing problems due to medical disorders. Do not rely on simple psychiatric diagnoses; instead amend the bill to require doctors to rule out other causes.

OTHER: Please pass the substitute which eliminates section 16 from the original bill. We should not muddy the therapeutic court statute by listing involuntary treatment courts. Please define what DCRs should do if they discover a mental health advance directive. Transferring patients between facilities without a court finding of necessity is a liberty deprivation. The term court ordered involuntary outpatient behavioral health treatment is confusing and makes a bad acronym. Periodic court review can be helpful but the therapeutic court guidelines should be placed in statute.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Johanna Bender, King County Superior Court/Superior Court Judges Association; Anne Mizuta, King County Prosecutor's Office; Tim Osborn, National Alliance On Mental Illness Washington.

CON: Darya Farivar, Disability Rights Washington; Steven Pearce, Citizens Commission on Human Rights.

OTHER: Bob Cooper, Washington Association of Drug Courts; Kari Reardon, Washington Association of Criminal Defense Lawyers/Washington Defenders Association.

Persons Signed In To Testify But Not Testifying: OTHER: Madeline Jaekle, Rutgers University School of Health Professions.

EFFECT OF HOUSE AMENDMENT(S):

- Removes exclusive jurisdiction of an Indian tribe for involuntary commitment of an American Indian/Alaska Native (AI/AN) to an E&T within the boundaries of the tribe, unless the tribe has consented to concurrent jurisdiction or explicitly declined to exercise jurisdiction.
- Requires notification of the tribe and Indian health care provider when a DCR investigates an individual and knows or has reason to know that they are an AI/AN who receives medical or behavioral health services from a tribe, instead of either/or, and extends this duty to an adolescent AI/AN.
- Allows a federally recognized Indian tribe to file a Joel's Law petition on behalf of an adolescent or adult member of the tribe.
- Requires HCA to establish written guidelines for conducting culturally appropriate involuntary commitment evaluations of an AI/AN by June 30, 2022.
- Adds a null and void clause.