

HOUSE BILL REPORT

HB 2725

As Reported by House Committee On:
Judiciary
Appropriations

Title: Court review of detention decisions under the involuntary treatment act.

Brief Description: Concerning court review of involuntary treatment decisions.

Sponsors: Representatives Cody, Morrell, Jinkins, Harris, Rodne, Bergquist, Robinson and Walsh.

Brief History:

Committee Activity:

Judiciary: 2/3/14, 2/5/14 [DP];

Appropriations: 2/10/14 [DPS].

Brief Summary of Substitute Bill

- Establishes a process allowing an immediate family member to petition the court for review of a designated mental health professional's decision not to seek an initial detention order under the Involuntary Treatment Act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts and Walkinshaw.

Minority Report: Do not pass. Signed by 1 member: Representative Shea.

Staff: Omeara Harrington (786-7136).

Background:

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for involuntary civil commitment. The standard for commitment under the ITA requires that, due to a mental disorder, the person poses a likelihood of serious harm or is gravely

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disabled. "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions. "Likelihood of serious harm" means that the person poses a substantial risk of physical harm to self, others, or the property of others, as evidenced by certain behavior, or that the person has threatened the physical safety of another and has a history of one or more violent acts. "Grave disability" means that the person is in danger of serious physical harm due to a failure to provide for his or her own essential human needs, or that the person manifests a severe deterioration in routine functioning, evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions, and is not receiving the care essential for health or safety.

Designated mental health professionals (DMHPs) are responsible for investigating and determining whether to detain an individual who may be in need of involuntary mental health treatment. Under emergency circumstances, a person may be detained without a court order if the likelihood of serious harm or danger due to grave disability is imminent. Under non-emergent conditions, a court order is required for an involuntary civil commitment.

When a DMHP receives information alleging that a person presents a likelihood of serious harm or is gravely disabled due to a mental disorder, the DMHP may petition the court for an initial detention order authorizing up to 72 hours of commitment for evaluation and treatment. Prior to seeking detention, the DMHP is instructed to first assess the credibility of the information received and attempt to interview the person about whom the information has been provided. The DMHP must consider all reasonably available information from credible witnesses and records regarding any history of one or more violent acts, prior commitments under the ITA, prior determinations of incompetency or insanity, and prior recommendations for evaluation for incompetency or insanity in criminal proceedings. Credible witnesses include anyone with significant contact and history of involvement with the person. The DMHP cannot file a petition for involuntary treatment unless satisfied that the allegations are true and the person will not voluntarily seek appropriate treatment.

A court order to detain a person for a 72-hour period may be issued upon the DMHP's request when the court is satisfied that there is probable cause to support the petition and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

Summary of Bill:

If a DMHP decides not to file a petition for initial detention, an immediate family member of the person may petition the superior court for review of the DMHP's decision. The immediate family member must serve notice of the petition on the DMHP. Within 24 hours of receiving notice of the petition, the DMHP is required to provide the court with a written explanation of the basis for the decision not to file an initial detention petition and a copy of the information collected during the DMHP's investigation.

If upon review of the DMHP's decision the court finds that there is probable cause to support a petition for initial detention, taking into consideration any information provided by the immediate family member, the court may enter an order for initial detention.

Immediate family members include: spouses, domestic partners, children, stepchildren, parents, stepparents, grandparents, and siblings.

Appropriation: None.

Fiscal Note: Preliminary 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) Counties vary a great deal in terms of the percentage of people who are ultimately committed following evaluation. Standards should be employed the same way across the state, and this variance should not exist to the degree it currently does. There are cases in which recommendations regarding the same gravely disabled person have changed over the years, with recommendations to detain stopping in recent years. This bill allows family members to question the DMHP while maintaining civil liberties, because the person still goes through the court process.

Although the mental health system is overwhelmed, this is an essential tool to ensure that people who desperately need help are not overlooked. There are numerous stories of family members and friends of people with mental illness who, despite repeatedly trying to obtain help for the person, are told that commitment standards are not met. There are often tragic results from this. Many people are too ill to make decisions to help themselves. A common symptom of mental illness is a lack of insight, so many people with mental illness are not aware that they are ill. People acting out due to mental illness often end up in a corrections setting when they belong in a hospital, and are released with no follow up care. Care also drops off after hospitalization, and there is no continuity of care.

Last July, a man was shot and killed by the Seattle SWAT team. His family and friends knew he was not taking his medication and was experiencing a severe bipolar episode, but he was repeatedly denied treatment. He was eventually detained after threatening the lives of police officers and DMHPs, but he was not treated long enough to recover and was discharged without follow-up. He obtained a firearm due to his paranoia, leading to the episode that caused his death. In another state, the circumstances would have been enough for commitment. This proposal would give family members the ability to have the court review the facts.

(Opposed) The current system allows for cases to be investigated while maintaining civil rights. The DMHPs are trained to look objectively at the facts and are trained in the law. Family members know the person, but do not have mental health training. Under this bill, a person could be deprived of liberty for three days without recommendation of a medical professional.

The system is already overwhelmed, and this bill would exacerbate the psychiatric boarding problem. Laws are taking effect this July that will lower the standard for commitment, which will increase commitments and put further strain on the system. Changes from these new criteria should be studied, and the underlying process should be studied, before further changes are made. The proper remedy is providing resources to make sure treatment is available in the community. The variance in how commitments are handled in different areas is alarming. A better investment would be to provide funds for statewide training on these new criteria.

This will hinder the DMHPs' work, because they will have to prepare additional paperwork demonstrating that there was legal insufficiency to file. Also, the defense attorney will ultimately call the DMHP as a witness in the commitment proceedings.

Persons Testifying: (In support) Representative Cody, prime sponsor; Doug Reuter and Nancy Reuter; Katy Ashton; Kathleen Johnson; Sara Hutchings; Karen Strand; Martin Hutchinson; Katie Wixom; Steve Danishek; Beryl Gorbaw; and Kim Meline.

(Opposed) Mike De Felice, Washington Defender Association; Gregory Robinson, Washington Community Mental Health Council; Rebecca Faust; and David Lord, Disability Rights of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Christian, Cody, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Parker, Pettigrew, Schmick, Seaquist, Springer, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

A null and void clause is added, making this bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Washington law states that its legislative intent is to provide prompt evaluation and timely and appropriate treatment to individuals with mental disorders. Last July, a man was shot and killed by the Seattle SWAT team. This death was easily preventable. Despite dozens of phone calls to Designated Mental Health Professionals (DMHPs) over a two-month period, he was allowed to decompensate until he finally met the criteria for detention by threatening lives. Failing to give this man a prompt evaluation and timely treatment resulted in the loss of his life and a cost to the government. Costs that could have been avoided if this man had been hospitalized the first time DMHPs were called include:

- an intervention by the crisis team, customs, and SeaTac police after he flew to London and was deported;
- a suicide attempt and hospitalization days later in Canada;
- a high speed chase and crash on Interstate 5 that endangered police and motorists in Snohomish County and resulted in x-rays and ambulance fees;
- a court hearing and hospitalization in Everett;
- a Secret Service investigation when he threatened the White House;
- numerous visits by crisis teams only to find he did not meet the criteria for detention;
- a court hearing and hospitalization in Seattle that cost \$65,000; and
- an 8-hour standoff with police that included costs for 20 swat team members working overtime, a medic, ambulance, medical examiner, autopsy, two SWAT team members on paid administrative leave for months; and a three day inquest estimated at over \$250,000.

All of these expenditures would have been saved if the DMHP had believed the parents and friends who knew this man best and hospitalized him right away.

This young man was only one of seven individuals with mental illnesses shot and killed by the Seattle Police Department last year resulting in costly inquest hearings. There is a published report today of a 16-year-old boy with a mental health history in Snohomish County being held for the murder of his mother last Friday. Families and others need a better means to intervene on behalf of their loved ones.

As was recommended in the aftermath of the Virginia Tech shooting several years ago, this bill should go further to lower the current detention standard from imminent danger to a substantial likelihood of harm. If it is not changed, judges reviewing these cases will have to apply the same standard as DMHPs. In considering the costs of enacting this bill, the cost offsets, the cost avoidance, and the cost of not enacting this legislation should be considered.

(Opposed) None.

Persons Testifying: Nancy and Doug Reuter; and Seth Dawson, National Alliance on Mental Illness.

Persons Signed In To Testify But Not Testifying: None.