

SENATE BILL REPORT

SB 6208

As Reported By Senate Committee On:
Human Services & Corrections, February 5, 1998

Title: An act relating to at-risk youth.

Brief Description: Revising procedures for at-risk youth.

Sponsors: Senators Hargrove, Long, Franklin, Winsley and Oke.

Brief History:

Committee Activity: Human Services & Corrections: 1/22/98, 2/5/98 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6208 be substituted therefor, and the substitute bill do pass.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Schow and Stevens.

Staff: Richard Rodger (786-7461)

Background: In 1995, the Legislature passed a comprehensive act dealing with runaway, truant, and at-risk youth, commonly referred to as the Becca Bill. Part of the act dealt with parents' rights to seek chemical dependency and mental health treatment for their minor children. The Legislature intended to broaden parents' rights to seek professional help for their children without the necessity of a court proceeding.

The Washington State Supreme Court ruled, in *State v. CPC Fairfax Hospital*, 129 Wn2d 439 (1996), that the mental health treatment process set up by the Becca Bill allowed a child to be released from treatment upon his or her request, unless the parents filed a petition under the state's involuntary commitment procedures. The child who was the subject of the *CPC Fairfax* case was not released upon her request, nor did her parents file a petition with the court. The court therefore ruled that the child's due process rights were violated. The court did not rule on the constitutionality of the ability of parents to seek treatment for their children.

In 1997, the Legislature passed ESSB 5082 in response to the court's ruling in *Fairfax*. The Governor vetoed the bill in its entirety citing due process and fiscal concerns.

The 1995 Becca Bill provided parents court access to deal with issues relating to their children's behavior. Those petitions are known as "Children in Need of Special Services" (CHINS) and "At-Risk Youth" (ARY) petitions. Two recent appellate court decisions have limited the use of contempt in CHINS and ARY proceedings.

The Becca Bill also modified the provisions dealing with truant youth. The truancy amendments provided that truancy petitions must be served on all parties. Some prosecutors have been told the service must be personal service absent a statute to the contrary.

Summary of Substitute Bill: The processes for the admission of a child to mental health or chemical dependency treatment are clarified by clearly separating the procedures for: (1) voluntary outpatient and inpatient treatment, (2) parent-initiated treatment, and (3) court-authorized involuntary treatment petitions.

Mental health and chemical dependency treatment of children is allowed, without the child's consent, when the decision is made by a medical professional at the request of a parent.

Admitting professionals may admit a child to treatment when the professional determines the treatment is medically necessary. The professional must be appropriately trained, as provided by rule, to conduct the evaluation. The evaluation must be completed within 24 hours unless the professional determines additional time is necessary. The child cannot be held longer than 72 hours without being admitted or discharged. During the evaluation period, the professional may only provide such treatment as necessary to stabilize the child's condition. The child must be provided with a statement of his or her rights within 72 hours of admission.

The independent review of the professional's decision to treat the child is made on the basis of whether the continued treatment is medically necessary. The review must be conducted by a professional person and occurs between seven and 14 days after admission to the facility. Five days after the independent review, the child may file a petition requesting judicial review. At the hearing, the facility or parents must show the medical necessity for continued treatment.

Thirty days later the independent or judicial review, whichever is later, a professional person or a county designated mental health professional must file a petition under the Involuntary Treatment Act or the child must be released. The department may contract out the independent reviews. The child must be released upon written request of the parent.

If the department determines that the treatment is no longer medically necessary, and the parents and the treating professional disagree, the facility may hold the child for up to three judicial days in order to allow the parents to file an At-Risk Youth Petition with the court. This determination may occur following any review by the department.

The Department of Health must conduct a survey of providers of mental health services to minors. The survey collects information relating to parental notification of their minor children's mental health treatment.

Parents are notified of their child's chemical dependency treatment only if the child consents to the notice or the treatment provider determines the child lacks the capacity to provide consent to the notice. The chemical dependency notice provision is based upon federal law.

The court may utilize either punitive (criminal) or remedial (civil) contempt. If the court chooses punitive contempt, the prosecuting attorney is no longer required to file an information, but must still file a motion and the court must still conduct a trial on the issue.

Truancy petitions may be served in any manner reasonably calculated to provide actual notice.

Substitute Bill Compared to Original Bill: Review standards have been raised to the level of medical necessity. Judicial review is provided, with the parents or facility carrying the burden of proof. The maximum length of stay is reduced to 54 days. The child is provided with a statement of rights.

Appropriation: None.

Fiscal Note: Requested on January 14, 1998.

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

Testimony For: This bill modifies the 1995 Becca bill to address issues raised by the Supreme Court and the Governor.

Testimony Against: This bill could allow more than 90 days of placement without a judicial review. We have concerns regarding the lack of children's due process in this bill. This bill raises concerns about Medicaid reimbursement.

Testified: Senator Hargrove, prime sponsor; Sherry Appleton, WDA/WACOL (concerns); Richard Warner, Citizens Commission on Human Rights (con); Jann Hoppler, DSHS Mental Health (con); Pete Peterson, WAJCA.