

# HOUSE BILL REPORT

## 2SHB 3076

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### As Passed Legislature

**Title:** An act relating to evaluations of persons under the involuntary treatment act.

**Brief Description:** Concerning the involuntary treatment act.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representatives Dickerson and Kenney; by request of Governor Gregoire).

**Brief History:**

**Committee Activity:**

Human Services: 1/25/10, 1/28/10 [DPS];

Ways & Means: 2/6/10, 2/8/10 [DP2S(w/o sub HS)].

**Floor Activity:**

Passed House: 2/15/10, 98-0.

Senate Amended.

Passed Senate: 3/3/10, 46-0.

House Refuses to Concur.

Senate Amended.

Passed Senate: 3/9/10, 48-0.

House Concurred.

Passed House: 3/10/10, 97-0.

Passed Legislature.

### Brief Summary of Second Substitute Bill

- Provides factors that the designated mental health professional and the courts should consider when determining whether a person should be detained under the Involuntary Treatment Act. The factors include both information and symptoms, and takes effect January 1, 2012.
- Allows designated mental health professionals and the courts, when making a determination for detainment under the Involuntary Treatment Act, to consider information provided by credible witnesses, who include family members or others who have had significant contact with the individual or who are familiar with the individual's history. The designated mental health provider must provide the witness's contact information to the prosecutor where the designated mental health provider has relied upon information from that witness, and takes effect January 1, 2012.

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*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.*

- Requires the Washington State Institute for Public Policy, in collaboration with the Department of Social and Health Services and others, to search for a validated mental health assessment tool or combination of tools for the assessment of persons for detention, commitment, or revocation under the Involuntary Treatment Act.
- Requires notice to a designated mental health professional when a person is discharged from an evaluation and treatment facility or state hospital.
- Requires the court to determine whether a defendant has the means to pay legal financial obligations where the defendant suffers from a mental health condition. The defendant would still be required to pay restitution and the victim's penalty assessment.
- Contains a null and void clause where specific funding is not provided for specific sections of the act.

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## HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Darneille, Green, Herrera, O'Brien and Walsh.

**Staff:** Linda Merelle (786-7092).

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## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Human Services. Signed by 21 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Schmick and Seaquist.

**Staff:** Carma Matti-Jackson (786-7140).

### **Background:**

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for an involuntary civil commitment. When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: (1) presents a likelihood of serious harm; or (2) is gravely disabled, the designated mental health professional may file a petition for an initial detention.

The Washington Supreme Court has held that the standard of "likelihood of substantial harm" evidenced by a recent overt act under the ITA provides a constitutional basis for detention under non-emergency circumstances. The court did not define "recent," but under

the facts of the case in which it made its decision, the acts referred to had occurred within five to six days prior to the filing of the petition for initial detention.

#### Likelihood of Serious Harm and Gravely Disabled.

Under current law, "likelihood of serious harm" means that there is a substantial risk that:

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

A person is "gravely disabled" if the person, as a result of a mental disorder:

- is in danger of serious physical harm resulting from a failure to provide for his or her 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 his or her actions and is not receiving such care as is essential for his or her health or safety.

#### Authority for Involuntary Commitment.

Under non-emergency circumstances, the court may authorize persons to be initially detained for up to 72 hours for evaluation and treatment. Upon a petition to the court and subsequent order, the person may be involuntarily held for a further 14 days. Upon a further petition and order by a court, a person may be held for a period of 90 days. If circumstances warrant, the Court may order a less restrictive alternative. If a person has been determined to be incompetent and criminal charges have been dismissed, and the person has committed acts constituting a felony as a result of a mental disorder and presents a substantial likelihood of repeating similar acts, the person may be further committed for a period of up to 180 days. No order of commitment under the ITA may exceed 180 days.

#### Information Considered by the Court.

The ITA sets forth the kinds of information that may be considered by a court in determining whether a petition for an evaluation and treatment for 72 hours, for a commitment of 14 days, or a commitment of 90 days should be granted.

For a 72-hour evaluation and treatment, the designated mental health professional who is conducting the evaluation shall include all reasonably available information regarding: (1) prior recommendations for evaluation of the need for civil commitments when made pursuant to criminal allegations; (2) a history of one or more violent acts; (3) prior determinations of incompetency or insanity; and (4) prior commitments under the ITA.

For a petition for a 14-day commitment following a 72-hour evaluation and treatment, or a subsequent 90-day commitment, the court is required to give great weight to: (1) a recent

history of one or more violent acts; or (2) a recent history of one or more commitments under the ITA or its equivalent provisions under the laws of another state. The existence of prior violent acts may not be the sole basis of determining whether a person presents a likelihood of serious harm.

The statute defines "recent" as a period of time not exceeding three years prior to the current hearing.

### **Summary of Second Substitute Bill:**

#### Risk Assessment Tool.

The Washington State Institute for Public Policy, in collaboration with the Department of Social and Health Services and other applicable entities, is required to search for a validated mental health assessment tool or combination of tools for the assessment of individuals for detention, commitment, or revocation under the ITA. This provision of the act expires on June 30, 2011.

#### Determinations for Civil Commitment.

A Designated Mental Health Professional (DMHP) conducting an evaluation for a 72-hour commitment under the ITA must consider all reasonably available information from credible witnesses and records regarding:

- prior recommendations for evaluation for civil commitments as ordered by a superior court judge;
- historical behavior of the person, including a history of one or more violent acts;
- prior determinations of incompetency or insanity;
- prior commitments under the ITA.

A credible witness may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person being evaluated. If the DMHP relies upon information from a credible witness in reaching the decision to detain an individual under the Involuntary Treatment Act, the DMHP must provide to the prosecutor contact information for that witness. Either the DMHP or the prosecutor must provide notice of the date, time, and location of any probable cause for the person detained.

The DMHP and the court, when making a determination regarding detention under the ITA, may consider symptoms and behavior, which standing alone would not support detention. These symptoms and behaviors may support a finding of a likelihood of serious harm to the person or others or that the person is gravely disabled. The symptoms that may be considered are those which:

- are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;
- represent a marked and concerning change in the baseline behavior of the person; and
- without treatment, the continued deterioration of the respondent is probable.

#### Notice Upon Discharge.

When a person who has been detained under the ITA is discharged from an evaluation and treatment facility or state hospital, the facility or hospital must provide notice of the discharge to the office of the DHMP responsible for the initial commitment and the professional office for the DHMP in the county where the person is expected to reside. The facility or hospital must also provide the offices of the DHMP with a copy of any less restrictive order or conditional release order issued upon discharge.

The notice and documents must be provided no later than one business day following the discharge. No notice is required if the person is discharged for the purpose of transfer to another facility for continued detention and treatment.

The Department of Social and Health Services must maintain and make available an updated list of contact information for offices of DMHPs around the state.

#### Financial Obligations for Defendants.

A judge, before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, must first determine that the defendant has the means to pay such sums. This requirement does not apply to the victim penalty assessment or any restitution ordered by the court.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 2, relating to information used by the DMHP to conduct initial evaluations for detention and section 3, relating to information used by the courts to determine commitment, which take effect January 1, 2012. However, section 1 relating to the search for a validated mental health tool, and sections 2 and 3 are null and void unless funded in the budget.

#### **Staff Summary of Public Testimony (Human Services):**

(In support) One of the goals of this bill is to make sure that a person gets into treatment before there is a crisis. The statute is currently limited to an immediate threat rather than "escalating behavior." In case law around sexually violent predators, there is an ability to distinguish between persons who have a past history and those who do not. This is another way of approaching the goal to get the attention of the authorities when a person's mental state is deteriorating. Compliments to the sponsor of the bill for changing the direction in which the state is going on these issues.

(Opposed) None.

#### **Staff Summary of Public Testimony (Ways & Means):**

(In support) For many years, families living with persons with mental illness have attempted to provide input to the authorities when a person's mental condition is deteriorating. These families have felt that they have not been listened to or they have been told that the information they have provided was not enough to justify intervention. The change in definition for "likelihood of serious harm" enables family members and others who are familiar with past behaviors of the respondent to report when a condition in behavior that they have seen before is reoccurring and is escalating. This is important information that mental health professionals and courts would want. There is a wide variation in how current standards and procedures are applied so having a standard assessment tool is a good thing and provides important consistency in any judgment decisions being made. This will help public safety and is worthwhile.

(In support with concerns) The counties do not believe that the jails are the appropriate place to treat people with mental health issues. We do support the goal of public safety but it is important to have resources in the proper place if there is to be an expansion in mental health services.

(Opposed) None.

**Persons Testifying** (Human Services): Representative Dickerson, prime sponsor; Kari Burrell, Office of the Governor; Seth Dawson and Eleanor Owen, National Alliance on Mental Illness.

**Persons Testifying** (Ways & Means): (In support) Seth Dawson, National Alliance on Mental Illness.

(In support with concerns) Rashi Gupta, Washington Association of Counties.

**Persons Signed In To Testify But Not Testifying** (Human Services): None.

**Persons Signed In To Testify But Not Testifying** (Ways & Means): None.