

SENATE BILL REPORT

SSB 5531

As Amended by House, April 21, 2011

Title: An act relating to the judicial costs of commitments for involuntary mental health treatment.

Brief Description: Reimbursing counties for providing judicial services involving mental health commitments.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators King, Prentice, Keiser and Shin).

Brief History:

Committee Activity: Human Services & Corrections: 2/10/11, 2/17/11 [DPS-WM, w/oRec].

Ways & Means: 2/25/11 [DPS(HSC), w/oRec].

Passed Senate: 3/02/11, 43-5.

Passed House: 4/09/11, 95-0; 4/21/11, 96-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5531 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Stevens, Ranking Minority Member; Baxter, Carrell, Harper and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senator Regala, Vice Chair.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5531 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Fraser, Hatfield, Hewitt, Holmquist Newbry, Honeyford, Keiser, Kohl-Welles, Pflug, Pridemore, Rockefeller, Schoesler and Tom.

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.

Minority Report: That it be referred without recommendation.

Signed by Senators Conway, Kastama and Regala.

Staff: Tim Yowell (786-7435)

Background: A person may be detained for involuntary commitment if a designated mental health professional finds, following investigation, that due to a mental disorder the person presents a likelihood of serious harm or is gravely disabled. Detention for longer than a 72-hour period requires court review and the detained individual is afforded an array of due process protections including the right to counsel, confrontation of witnesses, and a jury trial under certain circumstances.

Detention for civil commitment occurs at an evaluation and treatment facility (E&T). Twelve counties in Washington have E&Ts. These E&Ts are found in nine of the 13 Regional Support Networks (RSNs). Because E&T resources are not spread evenly across the state, counties which have E&Ts frequently serve patients who were detained outside of the county and RSN where the E&T is located. An estimated 38 percent of all civil commitment cases filed in 2009 were filed outside the RSN where the patient was originally detained.

An RSN currently reimburses counties for the judicial costs of civil commitment in two ways. First, the RSN pays a filing fee of \$230 of which 54 percent is retained by the county and 46 percent is transmitted to the state. Second, many RSNs pay direct reimbursement fees to the counties which host civil commitment hearings. All reimbursement funds are paid using non-Medicaid funding. In revenue and expenditure reports filed with the Department of Social and Health Services (DSHS), the RSNs reported spending \$4.3 million on judicial costs in fiscal year 2009 and \$6.5 million in fiscal year 2010. A survey distributed to counties in 2010 suggests that the actual cost of providing judicial services in civil commitment cases was an estimated \$6.6 million in calendar year 2009.

Summary of Substitute Bill: A county may apply to DSHS for reimbursement of its cost in providing judicial services. DSHS must provide reimbursement for each commitment case at a rate to be determined based on an average of expenditures within the county over the past three years. The reimbursement must be provided out of money withheld from the annual RSN appropriation. Any withheld funds not used for reimbursement must be distributed to the RSNs. The RSNs are prohibited from paying reimbursements for county judicial services out of funds that have been distributed. No filing fee may be charged for civil commitment cases subject to reimbursement under this act. A county may apply at reasonable intervals for an increase in the rate of reimbursement based on a change in its actual cost in delivering services. DSHS must develop rules and standards for the implementation of this act in consultation with affected parties. Maintenance of effort funds paid by counties to support the judicial services of involuntary commitment must be expended for other purposes that further treatment for mental health and chemical dependency disorders.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2012.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: This bill tries to provide uniformity and consistency in the payment of judicial costs in the most fair and equitable manner possible. We don't require all counties to have the same costs, but DSHS would determine whether the costs are reasonable. Addressing the costs may give us a chance to focus on the fact that there is not enough money in this system to address the needs we have as a state. We appreciate the collaborative process by which this bill was developed. King County prosecuted 485 out-of-county civil commitment cases in 2010, the impact of which takes about \$1 million away from funds available for treatment in the county. An entity who wants to develop more treatment beds should not have to worry about creating collateral impacts on the justice system. We are concerned about the scarcity of state treatment dollars.

CON: Small rural counties have concerns about this bill. There just isn't enough money. These counties are struggling to provide basic services and will find it even harder if they lose money to pay judicial costs.

OTHER: Providers in some counties appreciate this, while others who have not been contributing as much see they will lose money. We see a trend where costs increase while the available treatment dollars go down. There should be a lid to prevent costs from increasing beyond their current level. If counties can pass along their costs, they will not have an incentive to keep the costs down. We worry about how the billing system would work. There may be a conflict with another statute.

Persons Testifying (Human Services & Corrections): PRO: Senator King, prime sponsor; Mike DeFelice, The Defender Association; Ethan Rogers, King County Prosecuting Attorney's Office; Ken Roughton, Greater Columbia Mental Health; Amnon Shoenfeld, King County.

CON: Jim Potts, Rural Counties.

OTHER: Gregory Robinson, Community Mental Health Council; Mike Burgess, Spokane County.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):

PRO: A lot of work has gone into this legislation. It would establish a fair and equitable way to address a situation that hasn't been addressed before - some counties have been paying for court costs, some haven't; some have been paying more, others less. There have been efforts to come up with creative reimbursement methods locally, but right now there's only a patchwork quilt. In 2009 King County courts handled 479 Involuntary Treatment Act cases that originated in other counties, at a cost of \$600,000 that could have been used for other things. Removing the \$230 court filing fee from civil commitment actions would save King County an additional \$500,000 per year that could be used for critical mental health services.

Persons Testifying (Ways & Means): PRO: Senator King, prime sponsor; Jim Hendrick, King County; Briahna Taylor, Yakima County.

House Amendment(s): The RSNs must reimburse the counties for the judicial costs of involuntary commitment. The RSN where the patient resides must reimburse the RSN which serves the county of commitment. The Joint Legislative Audit & Review Committee must conduct an independent assessment of the counties' reasonable direct costs incurred in providing judicial services in involuntary commitment cases. This assessment will be used to establish the reimbursement rates. The assessment must include a review and analysis of reasons for cost differences between counties. This assessment must be conducted for any county which had more than 20 involuntary commitment cases in the preceding year. The judicial costs for 180 recommitment hearings at the state hospitals are excluded from reimbursement procedures. Clarifying and technical amendments are made.