

# HOUSE BILL REPORT

## E2SSB 5269

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to court review of detention decisions under the involuntary treatment act.

**Brief Description:** Concerning court review of detention decisions under the involuntary treatment act.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators O'Ban, Darneille, Rolfes, Dansel, Miloscia, Pearson, Bailey, Padden, Becker, Frockt, Habib and Pedersen).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 3/18/15, 3/19/15 [DPA].

#### **Brief Summary of Engrossed Second Substitute Bill (As Amended by Committee)**

- Establishes a process allowing an immediate family member, guardian, or conservator to petition the court for review of a designated mental health professional's decision not to seek a person's detention under the Involuntary Treatment Act.
- Requires the Department of Social and Health Services, regional support networks, and agencies employing designated mental health professionals to provide notice of the petition process.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

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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.*

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

"Likelihood of serious harm" means that a person poses a substantial risk of physical harm to self, others, or the property of others, as evidenced by certain behavior, or that a person has threatened the physical safety of another and has a history of one or more violent acts.

"Grave disability" means that a person is in danger of serious physical harm due to a failure to provide for his or her own essential human needs, or that a 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 essential care.

Designated mental health professionals (DMHPs) are responsible for investigating whether or not a person should be detained for an evaluation for involuntary mental health treatment. The initial detention period under the ITA is for up to 72 hours, excluding weekends and holidays. Under emergency circumstances, when the likelihood of serious harm or danger due to grave disability is imminent, a person may be detained without a court order. Under non-emergent conditions, a court order is required for an initial detention. 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.

Prior to pursuing initial detention, the DMHP must assess the credibility of the information received and attempt to interview the person about whom the information has been provided. The DMHP must also 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 seek initial detention for involuntary treatment unless satisfied that the allegations are true and the person will not voluntarily seek appropriate treatment.

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### **Summary of Amended Bill:**

Joel's Law is enacted.

When a DMHP decides not to detain a person for evaluation and treatment, or does not take action to have a person detained within 48 hours of a request for investigation, the person's immediate family member, guardian, or conservator may petition the superior court for the person's initial detention. Immediate family members include: spouses, domestic partners, children, stepchildren, parents, stepparents, grandparents, and siblings.

A petition must be submitted on a form developed by the courts, and must be accompanied by a sworn declaration of the petitioner, and other witnesses if desired, describing why the person should be detained for evaluation and treatment. The description may contain certain information about the person's mental health history, historical behavior, and symptoms and behavior that are meaningful in light of the person's history. The petition must state

the relationship between the petitioner and the person and the date on which the investigation was requested.

The court must review the petition for sufficient evidence within one judicial day. If sufficient evidence is found, the court must order the DMHP to provide the court with a detailed statement within one judicial day that describes the investigation and the decision not to file for initial detention, along with a copy of all information collected during the investigation. At any time prior to the court reaching a decision, any person may submit a declaration to the court in support of or in opposition to the detention. The court must dismiss the petition at any time if it finds that a DMHP has filed a petition for the person's initial detention or that the person has voluntarily accepted appropriate treatment.

The court must render a final decision within five days of the petition being filed and must transmit its final decision to the petitioner. The court may enter an order for initial detention if it finds, upon review of all provided information, that there is probable cause to support a petition for initial detention and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily. The court must provide the order to the DMHP agency, which must execute the order without delay. The order expires 180 days from issuance.

The Department of Social and Health Services and each regional support network or agency employing DMHPs is required to publish information describing the petition process in an easily accessible format. Upon receiving a request for an investigation, a DMHP or DMHP agency must inquire whether the request is from someone with standing to bring a petition for review of a detention decision. If the designated mental health professional decides not to detain the person, or if the person is not detained within 48 hours, the DMHP or DMHP agency is required to inform the requesting party of the petition process.

#### **Amended Bill Compared to Engrossed Second Substitute Bill:**

The provisions outlining the petition requirements are modified. The petitioner's description of the reason that the person should be detained may include certain information about the person's history and symptoms and behavior. Specific authorization is removed for a petition to contain a declaration by a mental health professional in support of the petition. The court must review the petition within one judicial day.

Changes are made to the process under which a court receives information from the DMHP. The requirement that the court provide the DMHP with any information accompanying the petition is removed. The DMHP is required, in response to the court's order requesting information, to provide the court with a copy of all information collected during the investigation.

A current law process in which a DMHP files a supplemental petition following the detained person's arrival at the facility is made inapplicable when the detention is initiated through a family, guardian, or conservator petition. Orders last a flat 180 days from issuance, rather than up to 180 days from issuance.

The requirement that DMHPs and DMHP agencies provide notice of the petition process to potential petitioners who have requested an investigation is expanded to require notification

if the DMHP decides not to detain the person (in addition to instances in which 48 hours have elapsed and the person has not been detained).

The null and void clause is removed. Other minor changes are made to wording, provisions are reorganized for clarity, and redundant language is removed.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The mental health system needs a safety valve or a workaround. The problem is not necessarily the fault of the DMHP, but parents need to have the ability to get around the gatekeeper. Parents know better than anyone when a child needs essential care. The Senate made some changes to the underlying bill to increase the likelihood that parents, especially those who cannot afford an attorney, will have their petition heard and increase the likelihood of their success. There is a commitment in both bodies to make this law.

This will give parents hope when right now there is no hope because of a government bureaucracy where the DMHP makes all decisions as to whether or not a person is put on a 72-hour hold. One last point needs work. The bill should be clear that once a family files a petition, the court cannot dismiss that petition unless there is a petition by the DMHP in its place. All of the mental health bills that are moving through this year are because the Legislature has made it a priority to take a hard look at all these issues. The Washington mental health system is clearly broken. Publicly addressing this has provided the credibility to move these issues forward.

This issue has been around for a long time. There is a bill before Congress that is almost the same as this bill. It is time that families are recognized as having some insight into the nature of mental illness. The rhetoric about paperwork and process should be disregarded. Individuals should get protection when they need it.

(Concerns) The comment has been made that the purpose of this bill is to give hope. It is important not to give false hope. There should be a requirement of mental health professional testimony in support of the petition before it comes before the court. Otherwise the family members pour their hearts out and the only medical testimony is from the DMHP. A finding of likelihood of serious harm or grave disability is a mixed question of law and fact because those criteria have to be based on the mental illness. One of the problems with this bill surrounds the confidentiality of medical information. The DMHP will submit information to the court, and the judge will turn the petition down based on information that cannot be shared with the family. If the goal is to force the DMHPs to do a better job, that should be done directly.

(Opposed) The strides to increase due process protections are appreciated and should be retained. Commitment is a medical decision and should lie with professionals. The fact that medical input can come in is appreciated. However, it will be difficult for anyone to know in the first place that the petition has been filed. There is an enormous unmet need with respect to mental health treatment. Keeping that in mind, the Legislature should put resources into upstream community-based treatment. The state cannot in good conscience put more people in detention. This measure needs to be fully funded if it passes.

(Other) This bill has constitutional problems. The rights of the person subject to the involuntary commitment are not protected. The person is not served with notice, has no hearing, there is no ability to call witnesses, and they are not given a lawyer. The court enters a ruling without even meeting the person. Any involuntary commitment, even for a short time, is a massive curtailment of liberty. If any legislator was put on a 72-hour hold, their political career would be over. This has happened to politicians before. This bill addresses non-emergency situations. There is plenty of time for a hearing.

The main point of the ITA is to prevent inappropriate commitment. This bill does not meet that standard. The system is still reeling from the last changes that have driven up commitments and the need for beds. This bill would add to that. There is a continuing safety issue with this. Psychiatric drugs are dangerous, and can cause a psychotic reaction. Once those issues are examined, a solution can be found. This bill does not address those issues.

**Persons Testifying:** (In support) Senator O'Ban, prime sponsor; Doug Reuter; and Eleanor Owen.

(With concerns) Steve Warning, Superior Court Judges Association.

(Opposed) Chris Kaasa, American Civil Liberties Union.

(Other) Richard Sanders; and Steven Pearce, Citizens Commission on Human Rights.

**Persons Signed In To Testify But Not Testifying:** None.