

FINAL BILL REPORT

E2SSB 5269

C 258 L 15
Synopsis as Enacted

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, Dandel, Miloscia, Pearson, Bailey, Padden, Becker, Frockt, Habib and Pedersen).

Senate Committee on Human Services, Mental Health & Housing
Senate Committee on Ways & Means
House Committee on Judiciary
House Committee on Appropriations

Background: A civil detention under the Involuntary Treatment Act (ITA) must be initiated by a designated mental health professional (DMHP). A DMHP may detain a person following investigation if the DMHP determines that the person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled. Likelihood of serious harm means a substantial risk that the person will inflict serious harm on self or others as evidenced by behavior which has caused such harm or places another person in reasonable fear of sustaining such harm. Gravely disabled means that the person is in danger of serious physical harm based upon a failure to provide for their essential human needs of health or safety, or manifests severe deterioration in routine functioning and is not receiving care that is essential for health or safety.

A DMHP investigation must consist of an evaluation of the specific facts supporting detention and an evaluation of the credibility of any witnesses providing information to support detention. A personal interview with the person is required unless the person refuses an interview. A DMHP may not initiate detention if it appears the person will voluntarily seek appropriate treatment. A DMHP must consider all reasonably available information from credible witnesses, including family members, landlords, neighbors, or others with a significant history of involvement with the person. A DMHP must also consider reasonably available treatment records, including records of prior commitment, prior determinations of competency to stand trial or criminal insanity, and any history of violent acts.

If the likelihood of serious harm is imminent, or if the person is in imminent danger due to being gravely disabled, the DMHP may immediately cause the person to be detained to a triage facility, crisis stabilization unit, evaluation and treatment facility, or emergency

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department. If the likelihood of serious harm or grave disability is present but not imminent, the DMHP must obtain a judicial order authorizing detention and certifying that the petition is supported by probable cause. The judicial order may be based upon sworn telephonic testimony or the DMHP's sworn declaration, and is issued ex parte.

Initial detention under the ITA is for 72 hours, excluding weekends and holidays, during which time the detained person must be provided with appointed counsel or allowed to retain counsel. Before the end of the 72-hour period, the facility providing treatment must release the person or file a petition asking the superior court to authorize continuance of detention for up to 14 additional days, or to commit the person for up to 90 days of outpatient treatment. The court must hold a probable cause hearing to determine whether there is sufficient evidence based on a preponderance of the evidence standard to issue a detention or commitment order. The probable cause hearing is an adversary hearing, governed by the rules of evidence, in which the facility must be represented by the county prosecuting attorney.

Summary: An immediate family member, guardian, or conservator of a person may petition superior court for review of a DMHP decision to not detain a person for evaluation and treatment under the ITA, or to not take action within 48 hours of a request for investigation. The court must review the petition to determine whether it raises sufficient evidence to support the allegation. If it so finds, the court must provide a copy of the petition to the DMHP agency and order the agency to provide the court and the petitioner with a written sworn statement providing the basis for the decision to not seek initial detention and a copy of all information material to the DMHP's decision within one judicial day.

Any person may submit a declaration in support of or in opposition to the DMHP's decision. The petition must be submitted on forms developed by the courts and contain a sworn declaration from the petitioner and other witnesses, if desired, describing why the person should be detained for evaluation and treatment, a description of the relationship between the petitioner and the person, and the date on which an investigation was requested from the DMHP.

If the court finds after reviewing all the information that there is probable cause to support initial detention, and that the person has refused to accept evaluation and treatment voluntarily, the court may enter an order for initial detention. The court must issue a final ruling on the petition within five judicial days after it is filed. The DMHP must execute the order without delay.

The Department of Social and Health Services and each regional support network or agency employing DMHPs must publish information in an easily accessible format describing the process for filing a petition under this act. A DMHP or DMHP agency that receives a request for investigation must inquire whether the request comes from an immediate family member, guardian, or conservator who would be eligible to petition under this act. If the person is not detained within 48 hours, the agency must inform this person about the process to petition for court review.

For the purposes of this act, immediate family member means spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling.

This act may be known and cited as Joel's Law.

Votes on Final Passage:

Senate	46	3	
House	92	5	(House amended)
Senate			(Senate refused to concur)
House	92	5	(House amended)
Senate	45	2	(Senate concurred)

Effective: July 24, 2015