SENATE BILL REPORT
SB 5904

As Reported by Senate Committee On:
Behavioral Health Subcommittee to Health & Long Term Care, February 22, 2019

Title: An act relating to implementing policies related to expanding adolescent behavioral health care access as reviewed and recommended by the children's mental health work group.

Brief Description: Implementing policies related to expanding adolescent behavioral health care access as reviewed and recommended by the children's mental health work group.

Sponsors: Senators Warnick, Darneille, Nguyen and O'Ban.

Brief History:
Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 2/22/19, 2/22/19 [DPS].

Brief Summary of First Substitute Bill

- Expands parent-initiated treatment provisions relating to outpatient treatment.
- Allows a mental health professional to disclose mental health treatment information of an adolescent to a parent without consent in certain circumstances.
- Allows a parent or adolescent to consent to disclosure of information to a treatment provider.
- Provides liability protection for mental health professionals related to the disclosure of an adolescent's mental health information.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5904 be substituted therefor, and the substitute bill do pass.
Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille and Frockt.

Staff: Kevin Black (786-7747)

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.

Background: Age of Consent for Behavioral Health Treatment. A minor age thirteen or older may admit themselves to an evaluation and treatment facility for inpatient mental health treatment or an approved substance use disorder treatment program for inpatient substance use disorder treatment without parental consent. The admission may occur only if the professional person in charge of the facility concurs with the need for inpatient treatment. Parental authorization, or authorization from a person who may consent on behalf of the minor, is required for inpatient treatment of a minor under age thirteen.

When, in the judgment of the professional person in charge of an evaluation and treatment facility or approved substance use disorder treatment program, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder or substance use disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to the facility.

Written renewal of voluntary consent must be obtained from the applicant no less than once every 12 months. The minor's need for continued inpatient treatments must be reviewed and documented no less than every 180 days.

Any minor age thirteen or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization, or authorization from a person who may consent on behalf of the minor, is required for outpatient treatment of a minor under the age of thirteen.

Parent-Initiated Inpatient Treatment. A parent may bring, or authorize the bringing of, their minor child to:

- an evaluation and treatment facility or a licensed inpatient facility and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment; or
- a secure detoxification facility or approved substance use disorder treatment program and request that a substance use disorder assessment be conducted by a professional person to determine whether the minor has a substance use disorder and is in need of inpatient treatment.

The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

The Health Care Authority (HCA) must assure that, for any minor admitted to inpatient treatment under parent-initiated treatment, a review is conducted by a physician or other mental health professional who is employed by HCA, or an agency under contract with HCA, and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment. The physician or other mental health professional shall conduct the review not less than seven, but no more than, 14 days following the date the minor was brought to the facility to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis. In conducting this review, HCA must consider the opinion of the treatment provider, the safety of the minor, and the likelihood the minor's mental health will deteriorate if released from inpatient treatment. HCA must also consult with the parent in advance of making its determination.

If HCA determines it is no longer a medical necessity for a minor to receive inpatient treatment, HCA must immediately notify the parents and the facility. The facility must release the minor to the parents within 24 hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor must be released to the parent on the second day following the HCA's determination in order to allow the parent time to file an at-risk youth petition. If the HCA determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal must be grounds for the parent to file an at-risk youth petition.

Following the HCA review, a minor child may petition the superior court for their release from a facility. This petition may be filed five days following the review. The court must release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility.

Parent-Initiated Outpatient Treatment. A parent may bring, or authorize the bringing of, his or her minor child to:

- a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment; or
- a provider of outpatient substance use disorder treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a substance use disorder and is in need of outpatient treatment.

The consent of the minor is not required for evaluation if the parent brings the minor to the provider. The professional person may evaluate whether the minor has a mental disorder or substance use disorder and is in need of outpatient treatment.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Provisions for parent-initiated outpatient treatment are expanded to specify that a parent of an adolescent who has been determined to be in need of outpatient treatment may request and receive up to 12 outpatient treatment sessions occurring within a three-month period for a nonconsenting adolescent. After this period, the adolescent must provide consent for continuing treatment. Outpatient treatment may include partial hospitalization or intensive outpatient treatment. If an entity providing outpatient treatment pursuant to parent-initiated treatment is providing solely mental health treatment, the provider must:

- convene a treatment review at least every 30 days involving the adolescent, parent, and treatment team to determine if treatment should continue;
- notify HCA within 24 hours of the adolescent's receipt of treatment for the purpose of an independent review of whether treatment is necessary, which must be renewed at least every 45 days thereafter.

If the entity is providing substance use disorder treatment, treatment reviews may only occur if the minor provides written consent to the disclosure of substance use disorder treatment information unless permitted by federal law.

When a mental health professional (MHP) provides mental health treatment but not substance use disorder treatment to an adolescent, the MHP may provide limited mental health treatment information about the adolescent to a parent that consists of:

- diagnosis;
- treatment plan and progress in treatment;
- recommended medications, including risks, benefits, side effects, typical efficacy, dose, and schedule;
- psychoeducation about the adolescent's mental health;
- referrals to community resources;
- coaching on parenting or behavioral management strategies; and
- crisis prevention planning and safety planning.

The MHP must determine that sharing the information would not be detrimental to the adolescent, and must not proactively provide this information to a parent unless the adolescent states a clear and documented desire to do so, except in instances concerning the imminent health and safety of the youth. An MHP must provide notice to an adolescent about disclosure and give ample time for the adolescent to express concerns to the MHP well in advance of disclosure. The MHP must document objections by the adolescent if the MHP discloses information over the adolescent's objection, and reasons for withholding information if the MHP determines that disclosure of information would be detrimental to the adolescent. The Department of Children, Youth, and Families may share the same information to a person with whom a child is placed in out-of-home care.

Either an adolescent or parent may authorize disclosure of records to a current treatment provider or to a potential treatment provider to facilitate referrals for additional mental health treatment services. The family must make efforts to jointly agree on the release of mental health treatment information, and the provider may refuse if the provider believes that release of information would be detrimental to the minor and documents the reasoning. Treatment records may not be released for the purpose of conversion therapy. Disclosure of substance use disorder records requires the adolescent's written consent, unless permitted by federal law.

An MHP is not liable for releasing or not releasing mental health treatment information to a parent based on the MHP's determination of whether release will be detrimental.

Parental notice provisions when an adolescent self-admits to inpatient treatment or gives notice of an intent to leave are limited to the context of an evaluation and treatment facility when the minor is admitted solely for mental health treatment and not for substance use disorder treatment. Parental notification when an adolescent self-admits for substance use disorder treatment may be provided only when the adolescent provides written consent to the disclosure.

A parent is defined, in order of priority, as:

- an appointed guardian or legal custodian;
- a person authorized by court to consent to medical care for a child in out-of-home placement;
- a biological or adoptive parent with legal custody;

- and individual to whom the minor's parent has given a signed authorization to make health care decisions for the minor; or
- a competent adult acting as a relative.

Adolescent is defined as a minor aged thirteen through seventeen.

This act may be known as the Adolescent Behavioral Health Care Access Act.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on First Bill: PRO: I participated in the CMHWG because I see such a huge need in our state. Last year a thirteen-year-old in my district committed suicide. Within 30 days, an eleven-year-old had done the same. We don't have enough providers. We need changes in the laws to protect our children. Children and parents need help. This is a small step to help parents get help for their adolescents. If we don't help kids early, their situation will become more severe, if they survive. This bill was developed through 21 meetings of a subcommittee of the CMHWG. This bill is a technical interpretation of the work group recommendations. They have done a beautiful job threading the needle. The group that developed this was very committed. If some don't love the recommendations, it's because of a balancing act between competing priorities. We worked hard to give more access to services to parents, teachers, and students but at the same time to preserve the access that exists now for children age thirteen and above. We don't want anyone who has access to treatment to lose that access. The education piece for clinicians found in SB 5903 will be important in order to educate the medical community. No child should be in charge of their medical decisions, especially mental health decisions. Children don't have capacity, and my child is proof of this. He says he wants help to get better, but does everything to make sure it doesn't happen. I got my child treatment out of state because I couldn't find a way to get him treatment in Washington.

OTHER: We want to engage adolescents with treatment when parents won't support their care, and engage parents when they advocate for their children. We are very supportive of the intent. We are pleased at the work that has been done so far to harmonize the bill with health information privacy laws. We are hoping for some technical amendments as this moves forward. Mental health professionals should be referenced in the immunity section. These issues are complex. We understand the dynamic between parents and children, and how important it is to have the support of family. It is scary for a parent to feel helpless and not be able to provide support. Providers need to understand what the law is and what they can and can't disclose. We have gotten close. but would still like some technical fixes.

Persons Testifying: PRO: Senator Judy Warnick, Prime Sponsor; Representative Noel Frame, 36th District; Melanie Smith, NAMI Washington; Laurie Lippold, Partners for Our Children; Paul Costello, citizen; Peggy Dolane, citizen.

OTHER: Diana Cockrell, HCA; Chris Bandoli, Washington State Hospital Association; Carey Morris, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: No one.