

HOUSE BILL REPORT

SHB 1058

As Passed House:

March 3, 2005

Title: An act relating to mental health treatment for minors.

Brief Description: Revising provisions relating to mental health treatment for minors.

Sponsors: By House Committee on Juvenile Justice & Family Law (originally sponsored by Representatives Dickerson, Hinkle, Moeller, Kenney and Darneille).

Brief History:

Committee Activity:

Juvenile Justice & Family Law: 1/21/05, 2/2/05 [DPS].

Floor Activity:

Passed House: 3/3/05, 96-0.

Brief Summary of Substitute Bill

- Codifies common law by statutorily permitting a parent or guardian to consent to a mental health evaluation and/or treatment of a minor child under the age of 13 without the minor's consent.
- Specifies that the parent-initiated alternative for mental health treatment for minors is available only for minors over the age of 13 and changes the time for review of the decisions to hold the minor.
- Adds a liability limitation for providers.

HOUSE COMMITTEE ON JUVENILE JUSTICE & FAMILY LAW

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Dickerson, Chair; Moeller, Vice Chair; McDonald, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Lovick and Roberts.

Staff: Sonja Hallum (786-7092).

Background:

Traditionally, parental consent has been required before any medical treatment could be provided to a minor. The only acceptable exception to this rule was if there was an emergency

and it was either impracticable to obtain parental consent or any delay would unduly endanger the minor's life.

The Washington Legislature has modified this common law approach and current law permits a minor who is over the age of 13 to consent to inpatient mental health treatment. The consent of the minor's parent or guardian is not required. Therefore, if the child is over the age of 13, and is not consenting to mental health treatment, by statute the only alternative available to a parent to obtain mental health treatment for the child is through the parent-initiated alternative.

Under the parent-initiated alternative, a parent may bring a child into a mental health evaluation and treatment facility and have the child evaluated and treated without the consent of the minor even if the minor is over the age of 13. The facility must follow the statutory guidelines for the evaluation and notification of the Department of Social and Health Services (Department). Once notified, the Department must conduct an independent evaluation. The minor also has the option of seeking a court review. The minor may be held under this option for 30 days. The following is an outline of the current time frames under which the process must occur:

Initial evaluation: The initial evaluation of the minor must take place within 24-72 hours from the time the minor was brought into the facility.

Department review: The review by the Department must occur between seven and 14 days following the date the minor was brought into the facility.

If the Department determines the minor does not need to remain in the inpatient facility, and the parent and professional person in charge of the facility believe the minor is in need of inpatient treatment, the minor must be released by the second judicial day following the Department's determination in order to allow the parent time to file an At-Risk Youth Petition.

Judicial review: The minor may seek a judicial review of the Department's decision to hold the minor. The petition for judicial review may be filed five days after the Department review.

Summary of Substitute Bill:

I. Minor under the age of 13:

The bill codifies common law by specifically authorizing a parent to obtain mental health treatment for his or her child who is under the age of 13.

II. Minor over the age of 13:

The permissible time limits for review of a decision to hold a minor under the parent-initiated alternative for mental health treatment are decreased. Under the substitute, the review of the decision to hold a minor must occur sooner than what is currently required. The following is

the outline of the time frames under which the parent-initiated process must occur in the substitute:

Initial evaluation: The initial evaluation of the minor must take place within 24-72 hours from the time the minor was brought into the facility.

Department review: The review by the Department must occur between three and seven days following the date the minor was brought into the facility.

If the Department determines the minor does not need to remain in the inpatient facility, and the parent and professional person in charge of the facility believe the minor is in need of inpatient treatment, the minor must be released by the second judicial day following the Department's determination.

Judicial review: The minor may seek a judicial review of the Department's decision to hold the minor. The petition for judicial review may be filed immediately following the Department review.

III. Liability limitation:

The bill adds evaluation and treatment facilities, as well as physicians and mental health professionals who are empowered to make admission and discharge decisions for the evaluation and treatment facility, to the statute providing a liability limitation. Under the statute, decisions to admit, release, or detain a person for evaluation and treatment cannot be the basis for a civil or criminal suit against the listed entities so long as the decisions were made in good faith and without gross negligence.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support) A child needed treatment and they had insurance to pay for it, but they couldn't get treatment so the child ended up in the juvenile justice system. This bill satisfies the need for a child to get treatment. Under the current system, a hospital won't take a child unless the child is threatening to kill himself that minute. A parent can't get a child admitted to a hospital to get help for the child. Fairfax hospital told a parents' group they won't admit a child over the age of 13 unless the child agrees. The liability limitation in the bill will hopefully encourage providers to treat children.

(With concerns) Concerned about the definition of at-risk youth and the difficulty of accessing an At-Risk Youth Petition. Concerned facilities can still get out of treating the child.

Testimony Against: The bill will increase psychiatric hospitalizations in the state. There are no protections against fraud or abuse. What kind of a fiscal bill will there be? There are concerns with the definition of medical necessity and the neutrality of the Department.

Persons Testifying: (In support) Representative Dickerson, prime sponsor; Cris Kessler; Ann Varpness; Kevin Glackin-Coley, Children's Alliance; Cathy Callahan, Networks of Support-King County; and Sherry Axson, Family Networks of Support-King County.

(In support with concerns) Patty King.

(Opposed) Richard Warner, Citizens' Commission on Human Rights.

Persons Signed In To Testify But Not Testifying: None.