HOUSE BILL REPORT
HB 2552

As Reported by House Committee On:
Early Learning & Children's Services

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

Brief Description: Changing provisions relating to minors who voluntarily seek mental health treatment.

Sponsors: Representatives Dickerson, Appleton, Roberts, Wood, Kenney, Kagi and Darneille.

Brief History:

Committee Activity:

Early Learning & Children's Services: 1/31/08, 2/1/08 [DPS].

Brief Summary of Substitute Bill

- Revises provisions for parental consent for mental health treatment for minors age 13 years and older.

HOUSE COMMITTEE ON EARLY LEARNING & CHILDREN'S SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kagi, Chair; Haler, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Hinkle and Pettigrew.

Minority Report: Do not pass. Signed by 2 members: Representatives Roberts, Vice Chair; Goodman.

Staff: Sydney Forrester (786-7120).

Background:

The general rule for consent to both inpatient and outpatient mental health treatment for children is that parental consent or authorization is required for children under the age of 13. Youth ages 13 years and older have the right to consent on their own behalf to outpatient or inpatient treatment without corresponding authorization from a parent. Exceptions to this rule allow for parent-initiated treatment based on an evaluation of the child and a finding that the

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treatment is medically necessary, and treatment initiated by a designated mental health professional.

Parent-Initiated Treatment
When a parent brings a child, regardless of age, to a facility for examination or evaluation, the consent of the minor is not required for admission, evaluation, and treatment. Evaluations in cases of parent-initiated treatment must be completed within 24 hours, with some exceptions for additional time, but in no case may a minor be held for evaluation longer than 72 hours. If, based on the evaluation, the mental health professional determines inpatient treatment is a medical necessity, the minor may be held for treatment. Within 24 hours of a decision to hold a minor for treatment absent the minor's consent, the facility must notify the Department of Social and Health Services (DSHS).

The DSHS then must conduct a review by an independent professional. The review must be conducted after the first week and before the end of the second week after the child is brought to the facility and must examine whether continuing the minor's inpatient treatment absent consent is a medical necessity. In making the determination, the DSHS must consult with the treatment provider and the child's parent.

If, based on the review, the DSHS determines inpatient treatment is no longer a medical necessity, the DSHS must notify the facility and the child must be released to his/her parents within 24 hours. If, however, the treatment provider and the parent disagree with the decision to release the child, the child shall not be released until after the second judicial day following the determination in order to allow the parent time to file an at-risk youth petition. If after review, the DSHS determines outpatient treatment for the child is a medical necessity and the child declines such outpatient treatment, the child's refusal is grounds for filing of an at-risk youth petition.

Following the review conducted by the DSHS, a youth who is not released may petition the court for release from the facility by filing a petition five or more days following the review. The court shall order the child released unless the court finds by a preponderance of the evidence that it is a medical necessity for the child to remain at the facility.

If the child is not released on the basis of the petition to the court, the child may be held for a maximum of 30 days following the date of the DSHS review or the filing of the petition to the court, whichever is later, unless a designated mental health professional initiates proceedings to have the child detained, evaluated, or admitted.

Medical Necessity
For purposes of inpatient treatment, medical necessity means that the treatment to be provided is reasonable calculated to:

(a) diagnose, correct, cure, or alleviate an organic, mental or emotional impairment that substantially and adversely affects the person's functioning; or
(b) prevent the exacerbation of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a disability or cause a physical deformity or malfunction, and there is no adequate less restrictive alternative available.

Summary of Substitute Bill:

A parent of a minor age 13 years or older can consent, on behalf of the minor, to outpatient or inpatient mental health treatment without the minor also consenting. The right of a minor age 13 or older to consent to outpatient and inpatient mental health treatment on his/her own is retained.

When a parent consents to outpatient or inpatient treatment or on behalf of a minor age 13 years or older:

(1) A parent's consent must be supported by a recommendation for such treatment from a psychiatrist, psychologist, or other licensed mental health professional with significant experience in the treatment of children with mental health disorders who has examined the minor.
(2) Prior to initiating outpatient treatment or within 48 hours of admission to an inpatient facility, a child psychiatrist or psychologist must conduct a complete assessment of the minor and his/her family.

The assessment becomes part of the treatment record and must include determinations regarding:

(1) whether the minor has a mental disorder for which treatment is a medical necessity;
(2) the relationship between the minor and his/her parents; and
(3) any other factors relevant to meeting the minor's need for mental health treatment.

At the beginning of treatment, the minor must be given a written explanation of the treatment that will be provided. The minor also must be provided notice of his/her right to petition the court to modify or terminate the consent to treatment.

Within 24 hours of outpatient treatment being initiated or of the child being admitted for inpatient treatment, the treatment provider must notify the superior court. The court must give the treatment provider the name and phone number of a contracted attorney. The treatment provider must immediately contact the attorney on behalf of the minor. The contracted attorney must meet with the minor within 24 hours, if the minor has been admitted for inpatient treatment, or within three days if the minor has initiated outpatient treatment. If, after meeting with the attorney, the minor wants to object to treatment, the attorney must file a petition with the court within two business days of meeting with the minor.

Once the petition is filed, the court must conduct a hearing within 72 hours following the filing of the petition. In order for the court to order the treatment to continue against the child's wishes, the court must find all of the following by a preponderance of the evidence:

(1) the minor has a mental health disorder or needs an evaluation to determine whether there is a mental health disorder;
(2) mental health treatment is a medical necessity; and
(3) the minor's disorder can be adequately treated by the proposed treatment provider.

The initial period of treatment allowed is up to 30 days for inpatient treatment and up to 90 days for outpatient treatment. If, at the end of the period of treatment ordered, the minor's treatment provider believes additional treatment is necessary, the court must conduct another review hearing to determine whether the minor should be released, or ordered to participate in additional treatment. The court may order additional inpatient treatment for up to 60 days or additional outpatient treatment for up to 90 days. The total period of treatment ordered can not exceed:
(1) six months for outpatient treatment; or
(2) three months for inpatient treatment.

Regardless of the time ordered by the court for treatment, a minor must be discharged from treatment whenever the following occurs:
(1) the treatment provider determines the minor is no longer in need of treatment; or
(2) the minor's parent revokes consent to treatment.

A parent cannot revoke a minor's consent to mental health treatment. A parent can revoke his/her own consent to treatment, but such revocation is ineffective if the minor has independently consented to treatment. A parent or other person with legal custody or rights to residential time with a child under a court order may object to consent by the other parent. The objecting parent may not, however, file a petition in objection if the consenting parent has sole decision-making authority regarding health care or medical care for the minor.

The definitions for *inpatient treatment* and *outpatient treatment* both are amended to include medication and medication supervision. The definition of outpatient treatment also is amended to include services outside those provided by a regional support network.

The Administrative Office of the Courts, in consultation with the DSHS and other interested organizations, must develop the statement of rights and standard forms for use in a minor's petition to the court challenging a parent's consent to treatment. The statement and forms must be designed to be readily understood and completed by 13-year-old youth.

Current provisions relating to parent-initiated inpatient treatment are repealed.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

(1) Rather than the treatment provider giving the minor the forms required to petition the court to challenge the treatment, helping the minor fill out the forms, and filing the forms with the court, the substitute bill directs the treatment provider to notify the superior court. The court must give the treatment provider the name of an attorney under contract for involuntary commitment proceedings. The treatment provider must contact the attorney. The attorney must then meet with the minor to determine if the minor wants to challenge the treatment, and must file a petition on behalf of a minor who wants to object or terminate treatment.

(2) For outpatient treatment, the time frames for treatment to which the minor does not consent are three months of initial treatment, with an additional three months allowed if ordered by the court.
(3) The DSHS or other supervising agency, including foster parents licensed by the DSHS or other supervising agency cannot use the provisions of the bill.
(4) The definition of *outpatient treatment* is amended to specify that services are not limited to those provided through Regional Support Networks.
(5) The definitions of *inpatient treatment* and *outpatient treatment* are amended to include medication and medication supervision as part of treatment.

Appropriation: None.

Fiscal Note: Requested on January 29, 2008.

Effective Date of Substitute Bill: The act takes effect on January 1, 2010.

Staff Summary of Public Testimony:

(In support of original bill) This bill supports the goal that all children who need mental health treatment get such treatment. It will assure that children who are 13 years and older get services when they need them. This is a very different approach than previously presented. It gives consent rights to both the parent and the child. Children who want mental health services and whose parents don't support the decision still can access needed treatment. When parents want their child to obtain necessary treatment, it gives the right to consent to the parent, but builds in appropriate safeguards along the way. There is nothing that leaves a parent feeling so helpless as when a child refuses the help he or she so desperately needs. The ages between 13 and 18 years of age are very critical and for some youth it is the time when severe mental health needs begin to emerge. Parents need the ability to consent on behalf of children who may be so mentally ill they cannot adequately assess their own needs. Developmental studies on the teenage brain show that teenage capacity is not that of adults, especially if the teen suffers from mental illness. Children often are not capable of making the final decision about their treatment needs on their own.

A parent who knows his or her child is mentally ill and needs treatment may have little ability to get the child into treatment under our current system. This approach builds off the work of the Legislature and acknowledges years of testimony on the need for mental health services for children and the frustration parents feel when they are unable to get their child into treatment. It is an onerous process for a parent to get a child involuntarily committed. The current process available to parents often gets a child who may be violent sent to juvenile detention instead of treatment where they can get appropriate assistance. Parents do not want their children sent to juvenile hall – they want their children to receive appropriate treatment. This bill provides a vehicle to further support parents and children in accessing needed services.

The implementation date is delayed until 2010.

(With concerns on original bill) The Superior Court Judges Association had some concerns with the original bill but this has been a work in progress and those concerns may be addressed in the substitute. The judges are agreeable with putting a mechanism in place but want to make sure all steps are covered, including clarity about what decisions the judges need to make, and assuring they have the information necessary to make those decisions.

The Washington State Psychiatric Association (Association) has some concerns solely with respect to the outpatient provisions of the original bill. There concerns may be addressed in the substitute but the Association has not had time to review the substitute closely.

(Opposed) The substitute does address some concerns from the original bill relating to due process. One area where the bill may fall short is in not admitting that this process is involuntary commitment. There also are concerns regarding how *medical necessity* is defined.

Persons Testifying: (In support of original bill) Representative Dickerson, prime sponsor; Jeff Howard, Mental Health Ombudsman; Sherry Axson; and Seth Dawson, National Alliance of Mental Illness.

(With concerns on original bill) Martha Harden Cesar, Superior Court Judges Association; and Seth Dawson, Washington State Psychiatric Association.

(Opposed) Steven Pearce, Citizen's Commission on Human Rights.

Persons Signed In To Testify But Not Testifying: None.