SENATE BILL REPORT
ESSB 5480

As Amended by House, April 16, 2013

Title: An act relating to mental health involuntary commitment laws.

Brief Description: Concerning mental health involuntary commitment laws.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Keiser, Kohl-Welles, Darneille, Nelson, McAuliffe and Kline).

Brief History:
Committee Activity: Human Services & Corrections: 2/07/13, 2/18/13 [DPS-WM].
Ways & Means: 2/26/13, 3/01/13 [DPS(HSC)].
Passed Senate: 3/11/13, 49-0.
Passed House: 4/16/13, 96-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5480 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove, Harper and Padden.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5480 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.
Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Bailey, Becker, Braun, Conway, Dammeier, Fraser, Hasegawa, Hatfield, Hewitt, Keiser, Kohl-Welles, Murray, Padden, Parlette, Ranker, Rivers, Schoesler and Tom.

Staff: Megan Atkinson

Background: In 2010, the Legislature passed 2SHB 3076, which expanded the criteria for involuntary civil commitment. It provided, in part, that civil commitment would be permissible when a designated mental health professional determines that the person under

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investigation who has refused voluntary treatment exhibits symptoms or behavior which standing alone would not justify civil commitment, but:

- such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;
- these symptoms or behaviors represent a marked and concerning change in the baseline behavior of the respondent; and
- without treatment, the continued deterioration of the respondent is probable.

The effective date of this section of 2SHB 3076 was postponed until 2012 so that the Washington State Institute for Public Policy (WSIPP) could study how the new commitment standard was likely to affect civil commitment rates. In a two-part report published in 2011, WSIPP concluded that after implementation the rate of detention would increase from the currently prevailing rate of 40 percent of all civil commitment investigations to a rate between 45-55 percent of all civil commitment investigations, resulting in between 975 and 3104 new inpatient psychiatric admissions per year. According to WSIPP, this increase would require the development of between 48 and 193 new involuntary treatment beds across the state.

In 2011 the Legislature passed SHB 2131, which further delayed the effective date of the new commitment standard until July 1, 2015.

A person may be detained for civil commitment under the Involuntary Treatment Act (ITA) if, due to a mental disorder, the person presents a likelihood of serious harm or is gravely disabled. Mental disorder means any organic, mental or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions. Likelihood of serious harm means a substantial risk that a person will inflict physical harm on themselves, others, or the property of others. Gravely disabled means a danger of serious physical harm resulting from a failure to provide for essential human needs of health or safety, or a severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control combined with an absence of care essential for health or safety.

Detentions under ITA are initiated by designated mental health professionals (DMHPs) employed by regional support networks. A DMHP conducting a detention investigation may initiate detention one of two ways. If the likelihood of serious harm or danger due to grave disability is imminent, a DMHP may initiate an emergency detention and cause the person to be taken into emergency custody in an evaluation and treatment facility for up to 72 hours, excluding weekends and holidays. Detention past this 72-hour period requires filing of an additional civil commitment petition and a probable cause hearing in superior court. If the likelihood of serious harm or danger to due grave disability is not imminent, a DMHP may initiate detention for up to 72 hours in a manner similar to the process for an emergency detention, except that a DMHP's petition or sworn telephonic testimony must be reviewed in advance for probable cause and approved by a judicial officer.

Summary of Engrossed Substitute Bill: The effective date of the sections of 2SHB 3076 yet to be enacted is accelerated from July 1, 2015 to July 1, 2014.

The Department of Social and Health Services (DSHS) must consult with stakeholders and legislative staff to ensure that monies appropriated for this legislation are spent in ways that increase involuntary commitment capacity consistent with the findings of WSIPP.

A DMHP must take serious consideration of the observations and opinions of examining physicians. An examining physician who disagrees with a decision not to initiate detention may submit a declaration describing why the physician believes detention is appropriate and stating whether the physician is willing to testify to the physician's observations in court. A DMHP who receives such a declaration and does not initiate detention must respond in writing to the physician.

A DMHP who conducts an evaluation for imminent likelihood of serious harm or imminent danger due to grave disability must also evaluate the person for likelihood of serious harm or grave disability that does not meet the imminent standard for emergency detention.

The fact that a mental disorder is caused by an underlying medical condition does not provide a reason to withhold detention under ITA. The fact that a person has been involuntarily detained does not give the right to perform medical treatment against the person's will, except as expressly authorized by law.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections): PRO: This bill is an effort to put urgency into the implementation of the good policy we passed several years ago. We can be creative and use less expensive approaches to implementation such as integrating community services and supports. We opposed the delay in 2011; we continue to believe that lives depend on this policy decision. We support efforts to be creative. My son was not able to be committed because beds were full and he committed suicide the next day. I believe if this bill were implemented and more funding provided, he would be alive today. This measure is a positive step towards making vulnerable citizens safe and it will save lives.

OTHER: We believe in treatment and early intervention. We are concerned about funding and the backups in emergency rooms. We will be stuck if we do not receive funds for infrastructure and staffing.

Persons Testifying (Human Services & Corrections): PRO: Senator Keiser, prime sponsor; Seth Dawson, National Alliance on Mental Illness (NAMI), NAMI WA; Lorena Taylor-McPhail, NAMI.

OTHER: Gregory Robinson, WA Community Mental Health Council; Abby Murphy, WA Assn. of Counties.

Staff Summary of Public Testimony (Ways & Means): PRO: There have been concerns about the funding for increased caseloads; additional funding is needed to support the expansion. There are not enough beds in the system. The mental health system is as broken as I have ever seen it. We need the changes in this law to get people treatment earlier, when they need it, and before the crisis hits. We support the changes in the detention and commitment standards that were passed in 2010. Hospitals and jails are over-crowded with people who are not getting needed treatment. If you would appropriate the funding needed, we would support moving up the date. This is a priority, the original extension was opposed. We do not save money by not treating these individuals. We need to take into account cost avoidance. Please take into account the fiscal and human considerations. It is time for a change on how we treat the seriously mentally ill. A critical component of making this bill work is having sufficient resources in the community. DSHS is proposing evidence-based, intensive community programs. We have an infrastructure problem on actually implementing this bill.

OTHER: We spend a lot of time and resources treating people in the hospitals. It is demoralizing to see someone you just spent a year treating come back into care because they didn't get the support in the community they needed. We could fully support the bill if the fiscal note is funded.

Persons Testifying (Ways & Means): PRO: Seth Dawson, Eleanor Owen, NAMI; Karen Strand; Lawrence Thompson, WA Federation of State Employees; Jane Beyer, DSHS; Abby Murphy, WA Assn. of Counties.

OTHER: Rick Hertzog, WA Federation of State Employees; Gregory Robinson, citizen.

House Amendment(s): A requirement for DSHS to consult with stakeholders is eliminated. Requirements for DMHPs to consider the opinions of examining physicians, consider nonemergency detentions for persons who do not meet the standard of imminence, and to consider mental disorders that are based on underlying medical conditions are eliminated.