

SENATE BILL REPORT

SB 6124

As Reported by Senate Committee On:
Human Services & Corrections, January 24, 2018

Title: An act relating to clarifying that court hearings under the involuntary commitment act may be conducted by video.

Brief Description: Clarifying that court hearings under the involuntary commitment act may be conducted by video.

Sponsors: Senators Dhingra, Palumbo, Mullet, Frockt, Takko, Darneille, Rolfes, Billig, Cleveland, Kuderer, Wellman, Carlyle, Ranker, Hasegawa, Saldaña, Nelson, Keiser, McCoy, Van De Wege, Chase and O'Ban.

Brief History:

Committee Activity: Human Services & Corrections: 1/15/18, 1/24/18 [DPS, DNP].

Brief Summary of First Substitute Bill

- Defines the term hearing, under the Involuntary Treatment Act (ITA), as any proceeding conducted in open court.
- Allows for individuals to participate in hearings either in person or by video, or by any equivalent technology, including telephonic testimony for witnesses.
- Requires all parties to participate in the hearing in person rather than video, if determined by the court.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6124 be substituted therefor, and the substitute bill do pass.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Frockt, Miloscia and Walsh.

Minority Report: Do not pass.

Signed by Senator Carlyle.

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.

Staff: Keri Waterland (786-7490)

Background: The ITA provides for the civil commitment of persons who are found to have a mental disorder, and as a result of the mental disorder, to present a likelihood of serious harm or to be gravely disabled. Other requirements include that the person will not voluntarily cooperate with treatment and that there is no less restrictive alternative available that will meet the needs of health and safety.

Likelihood of serious harm means a substantial risk that a person:

- will inflict physical harm upon their own person, evidenced by threats or attempts to commit suicide or inflict physical harm on themselves;
- will inflict physical harm upon another, evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or
- will inflict physical harm upon the property of others, evidenced by behavior which has caused substantial loss or damage to the property of others.

Likelihood of serious harm may also be established if the person has threatened the physical safety of another and has a history of one or more violent acts.

Gravely disabled means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals:

- is in danger of serious physical harm resulting from a failure to provide for the individual's essential human needs of health or safety; or
- manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health or safety.

A person may be initially detained for investigation for civil commitment by a designated mental health professional (DMHP) for up to 12 hours. If the DMHP finds a basis for commitment, the DMHP may detain the person for up to 72 hours, excluding weekends and state holidays, to an evaluation and treatment facility (E&T), or if an E&T cannot be located, to a facility which is willing and able to provide timely and appropriate mental health treatment under a single bed certification. If neither an E&T bed nor a single bed certification can be located within the 12-hour initial detention period, the DMHP may not detain the person. During the 72-hour detention period, the facility providing detention may file a court petition for authorization of an additional 14 days of involuntary treatment. At this point, the person is provided with counsel and is provided with a judicial hearing, including the right to present evidence and confront witnesses. If detention continues past this stage, further petitions may be filed for 90 or 180 additional days of involuntary treatment.

Effective April 1, 2018, the ITA is expanded to include detention based on a substance use disorder as well as a mental health disorder. At this time, DMHPs will be renamed designated crisis responders.

Summary of Bill (First Substitute): The term hearing, under the ITA, is defined as any proceeding conducted in open court. At an ITA hearing, the petitioner, the respondent, any

witnesses, and the presiding judicial officer may be present and participate either in person or by video, or by any equivalent technology, provided that all parties must be able to see, hear, and speak, and attorneys must be able to use exhibits or other materials. Witnesses may provide testimony telephonically. The court determines if all parties are required to participate in the hearing in person rather than by video. The court may consider if the individuals alleged mental illness affects their ability to perceive or participate by video. The respondent's counsel shall be in the same location as their client unless otherwise requested by the respondent or the their counsel.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (First Substitute):

- Adds that participation in the hearing either in person or by video is determined by the court.
- Adds clarifying language that witnesses may appear through other means, including by telephone.

Appropriation: None.

Fiscal Note: Available.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This is efficient and good for the patient. This is fiscally better for all parties involved, the impact is to the patient, who is often transported by ambulance in restraints, experiences long waits, and the court process sometimes takes four to six hours long, all while still being in restraints. There is no change to the legal process—hearings can continue. Process safeguards are in place. Best care for the ITA patient. My mother had to be a witness for my brothers ITA hearing, and it would have been difficult for her to testify by video, so I suggest adding language that gives witnesses the ability to call into the hearing by telephone.

CON: Increases due process issues. Video is less persuasive than in person, negatively impact clients, and studies show that video testimony is not equal to being in the same room. This may impede the individuals ability to participate. Creates a loss of liberty of the rights and dignities of the mentally ill. This is unnecessary and the option already exists. Technical difficulties are common.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; Ian Goodhew, UW Medicine-Harborview Medical Center; Johanna Bender, Superior Court Judge's Association; Chelene Whiteaker, Washington State Hospital Association.

CON: Elisabeth Smith, ACLU of Washington; Mike De Felice, King County, Department of

Public Defense; Washington Defender Association, Washington Association of Criminal Defense Attorneys.

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