

HOUSE BILL REPORT

E2SSB 5763

As Reported by House Committee On: Health Care

Title: An act relating to the omnibus treatment of mental and substance abuse disorders act of 2005.

Brief Description: Creating the omnibus treatment of mental and substance abuse disorders act of 2005.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Stevens, Regala, Brandland, Thibaudeau, Carrell, Brown, Keiser, Fairley, McAuliffe, Rasmussen, Kline, Kohl-Welles and Franklin).

Brief History:

Committee Activity:

Health Care: 3/21/05, 3/29/05 [DPA].

Brief Summary of Engrossed Second Substitute Bill (As Amended by House Committee)

- Establishes two pilot projects to operate a unified involuntary treatment act for persons with mental illness, chemical dependency, or both, combined with a secure detoxification facility.
- Establishes a pilot project to evaluate a chemical dependency intensive case management project.
- Requires additional chemical dependency treatment services.
- Requires chemical dependency resources in every office of the Division of Children and Family Services.
- Establishes a new "enhanced resources facility" designed to address complex cases that cannot be addressed in existing licensed facilities.
- Provides for the suspension rather than termination of a person's Medicaid eligibility when they are incarcerated.
- Requires Regional Support Networks to provide any child with a mental health evaluation.

- Authorizes counties to impose a 1/10 of 1 percent sales and use tax to fund new mental health or chemical dependency services. Funds raised cannot supplant existing funds.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended. Signed by 10 members: Representatives Cody, Chair; Campbell, Vice Chair; Morrell, Vice Chair; Appleton, Clibborn, Green, Hinkle, Lantz, Moeller and Schual-Berke.

Minority Report: Do not pass. Signed by 3 members: Representatives Bailey, Ranking Minority Member; Curtis, Assistant Ranking Minority Member; and Alexander.

Staff: Dave Knutson (786-7146).

Background:

Under current law, Washington has separate Involuntary Treatment Acts (ITAs) for persons who are gravely disabled or a danger to self or others as a result of chemical dependency or mental illness. The ITA for mental health is an entitlement; courts and prosecutors must act to civilly commit persons who meet ITA criteria. The ITA for chemical dependency is permissive.

The Joint Legislative and Executive Task Force on Mental Health Services and Funding (Task Force) was established by the Legislature in 2004 to review residential and inpatient mental health treatment capacity, the impact of federal changes in Medicaid funding, and related system organization and financing issues. The Task Force considered these issues for both children and adults, and both the civil mental health system, and the interaction with the criminal justice system with regards to mentally ill persons held in jails and delays in the competency examination and restoration process.

The Task Force reviewed reports and recommendations by the Cross-System Crisis Response Initiative (Initiative), the Department of Social and Health Services (Department), and the Public Consulting Group Inpatient and Residential Capacity Report, prepared in compliance with SB 6358.

The Task Force recommended that: (1) funds lost due to the changes in interpretation of Medicaid law be replaced by state funds, to the maximum extent possible, with conditions to be imposed by the Legislature; and (2) additional funds, to the extent available, be directed to (a) the shortage of inpatient and residential capacity; (b) retaining existing community beds; and (c) meeting forensic evaluation and bed needs.

The Task Force made the following policy recommendations:

- (1) the Department should not close state hospital beds until additional residential capacity is added in the community;

- (2) the Department should suspend, rather than terminate Medicaid eligibility for confined persons and expedite Medicaid eligibility determinations for persons being released from jails, prisons, and the hospitals;
- (3) the Legislature should give greater direction in the use of non-Medicaid funds;
- (4) the Legislature should authorize the statewide use of mental health courts;
- (5) the Department and the Regional Support Networks (RSNs) should develop contingency plans for the potential loss of some or all of the state-only funds in the 2005-07 biennium;
- (6) the Legislature should require the use of evidence-based practice and promote recovery from mental illnesses; and
- (7) the Legislature should extend the Task Force into the 2005-07 biennium.

The Initiative resulted from work that began in 2003 with a broad task force co-convened by the Department and the counties with the purpose of making meaningful changes to the way that service systems respond to adults in mental health and chemical dependency crisis. The Initiative made the following findings:

- (1) there is no single, effective crisis response system;
- (2) every field responding to crisis is experiencing difficulty;
- (3) the ITA has become an over-burdened default response which affects jails and hospitals;
- (4) people in crisis are not adequately being served; and
- (5) crisis response services are, themselves, in crisis.

Based on these findings, the Initiative made the following recommendations which were adopted by the Department and the counties in the Initiative:

- (1) revise the ITA to create a combined crisis response for all identified populations that is available 24 hours per day, 7 days per week;
- (2) establish safe, secure detoxification capacity;
- (3) implement intensive case management for persons with chemical dependency;
- (4) create hospital diversion beds for adults with medical and behavioral issues, persons with developmental disabilities, and provide in-home stabilization;
- (5) develop cross-system crisis plans for persons under court ordered treatment and Department of Corrections (DOC) supervision and other persons at risk; and
- (6) provide training and consultation related to managing behavior, assessment, and regulations, including consultation at the state hospitals for long-term care providers.

Summary of Amended Bill:

The legislation is divided into nine parts that cover six major areas.

Part 1: General Provisions

The Department is required to report to appropriate committees of the Legislature by December 1, 2005 on the feasibility of accessing federal funds for optional clinic services, services to children under the early periodic screening, diagnosis and treatment program,

targeted case management, the reasons for reducing state hospital capacity, and a cost analysis of treatment in state and community hospital treatment. The Department is prohibited from reducing hospital beds until a like amount is available in the community.

All persons providing mental health treatment are required to use an integrated comprehensive screening and assessment process for chemical dependency and mental disorders and record the number of individuals with co-occurring disorders beginning no later than January 1, 2007. Providers who fail to use the screening tool will be subject to contractual penalties.

Existing rights of involuntarily committed persons are consolidated, and exceptions to the confidentiality of mental health records are clarified. The language governing the administration of involuntary medications is rewritten.

Part 2: Involuntary Treatment Act (ITA) Pilot Projects

The Secretary of the Department (Secretary) will contract for two pilot projects to operate an integrated crisis response and involuntary treatment program for adults with a chemical dependency, a mental disorder, or both. Training, staff, and resources will be sufficient to provide 24-hour services, seven days a week, for both integrated services and secure detoxification services in the two pilot areas. The Washington Institute for Public Policy (Institute) will evaluate the two pilot programs and provide an interim report by December 1, 2007, and a final report by September 30, 2008. These two pilot ITA projects expire March 1, 2008.

The Secretary is also required to contract with counties to provide intensive case management for chemically dependent persons with histories of high utilization of crisis services at two sites separate from the two pilot ITA sites. These pilot programs will begin providing services by March 1, 2006 and end on June 30, 2008.

The Department will also develop a pilot program to evaluate the effectiveness of clubhouse psychiatric rehabilitation programs, in conjunction with the Institute. The Institute will report evaluation results to the Legislature by December 1, 2007.

The single act will provide a single standard and process for mental health and chemical dependency involuntary commitment.

The existing ITAs are replaced with one unified ITA, effective July 1, 2009. Effectively, this creates a new entitlement for involuntary chemical dependency treatment, where none presently exists. The Department is required to determine whether all rights of persons detained under the unified ITA process, and the state and federal Constitutions are protected and secured. The Department is required to report to the Legislature by December 1, 2006 the types of facilities that will be certified for detention or commitment under the unified ITA. This part, related to the creation of a unified ITA, is null and void if specific funding is not provided by the Legislature by June 30, 2009.

Part 4: Treatment Gap

The Department must expand chemical dependency treatment for Medicaid eligible persons with incomes under 200 percent of poverty to 40 percent of the identified need by 2006, and to

60 percent of the identified need by 2007. The identified need was calculated in 2003 by the Washington State Needs Assessment Study. The Department must also contract for chemical dependency services at every office of the Division of Children and Family Services (Division).

The Department must also assess the cost effectiveness of converting unused nursing home facilities to residential chemical dependency treatment facilities and report to the Legislature by September 1, 2005. If cost effective, the Department is authorized to convert these facilities, subject to capital appropriations for this purpose.

The Department must develop and expand comprehensive treatment programs for pregnant and parenting mothers, within funds appropriated for this purpose.

Part 5: Resources

A new category of residential facility known as an enhanced services facility (ESF) is created. The facility will serve individuals who are not appropriate for existing facilities and has a mental disorder, chemical dependency disorder, or both, has an organic or traumatic brain disorder, or a cognitive impairment requiring supervision and facility services, and has other qualifying behaviors or complex needs. The Department may contract for ESF services only to the extent that funds are specifically provided for that purpose.

Part 6: Drug and Mental Health Courts

- (1) The authority of counties to establish mental health courts and drug courts is clarified. Counties may combine both courts into a single "therapeutic court."
- (2) Counties that enact the 1/10 of 1 percent sales tax authorized by the bill must establish family therapeutic courts for families involved in dependency and termination proceedings.
- (3) The Department must enter into interlocal agreements with jails, the DOC, and institutions for mental diseases to facilitate eligibility determinations for medical assistance upon release from confinement. The Department is authorized to use medical records that jails have prepared, if available.
- (4) The Department must reduce waiting times for competency evaluation and restoration to the maximum extent possible using funds appropriated for this purpose, and report to the Legislature by January 1, 2006, on alternatives to reduce waiting times and address increases in forensic population.
- (5) The Joint Legislative Audit and Review Committee (JLARC) must study whether facilities exist that would be appropriate and cost-effective to convert and use as regional jails for confined persons with mental disorders, and report their findings to the Legislature by December 15, 2005.

Part 7: Best Practices and Collaboration

Requirements are established in three broad areas and requires some new services for children.

Area one. The Department must adopt a comprehensive, integrated screening and assessment process for mental illness and chemical dependency by January 1, 2006 with implementation

to be completed systemwide not later than January 1, 2007. The Department must establish penalties for failure to implement this process beginning July 2007. The DOC is also required to use this screening tool for individuals under its jurisdiction.

Area two. The Department must develop a matrix or set of matrices of services for adults and children based on maximizing:

- (1) evidence-based, research-based, and consensus-based practices;
- (2) principles of recovery, independence, and employment;
- (3) collaboration with consumer-based programs; and
- (4) individual participation in treatment decisions to the maximum extent possible, including providing information and technical assistance for the preparation of mental health advance directives.

The Department must work with the University of Washington and consult with stakeholders in developing the matrix, which should build on existing work done by the Department. The Department must require use of the matrix or set of matrices by contract and provide penalties for failure.

Beginning in 2007, vendor rate increases for mental health and chemical dependency providers will be prioritized to those providers who maximize the use of evidence-based and research-based practices, unless the Legislature provides otherwise.

Area three. The Department is required to collaborate with service providers to arrange services for children who need mental health treatment but who are not eligible for Medicaid or RSN services.

The Institute must conduct a study of the net present cost of treatment versus non-treatment for mentally ill and chemically dependent persons.

Part 8: Technical

This section includes contingent repealers, and those sections that correct cross-references to repealed sections.

Part 9: Fiscal and Miscellaneous Provisions

County legislative authorities are authorized to levy a 1/10th of 1 percent sales tax dedicated to new and expanded therapeutic courts for dependency proceedings, and new and expanded mental health and chemical dependency treatment services.

The individual sections of the bill that require pilot projects, new state chemical dependency treatment, chemical dependency services for child welfare offices, studies by JLARC and the Institute, and integrated mental health/chemical dependency assessments are null and void if specific funding is not provided for them individually, referencing them by section number, by June 20, 2005.

Amended Bill Compared to Engrossed Second Substitute Bill:

The requirement that the Department maintain one state hospital bed for every 10 beds established in the community is deleted. The unified ITA that is proposed to go into effect in

July 2009 is deleted. The ability of a parent to seek mental health treatment for their child is clarified. Additional standards and requirements related to clients and staff of enhanced services facilities are provided. Additional sections of the bill that have a fiscal impact are provided null and void clauses.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on July 1, 2005, except for section 603, relating to the establishment of a therapeutic court for dependency proceedings, which goes into effect on July 1, 2006.

Testimony For: (In support) A major investment in additional treatment for people with a mental illness or a chemical dependency will reduce expenditures in public health and safety, and local criminal justice programs. Many people with a chemical dependency problem cannot access treatment services because public funding is so limited. The local option tax will bring in needed resources to help people address their mental illness or chemical dependency.

(With concerns) The language related to involuntarily medicating persons is unconstitutional and should be changed. The involuntary medication panel should be completely independent, and should have subordinate staff serving on them. The language contained in E2SHB 1290 related to the suspension of Medicaid eligibility when a person is incarcerated, is preferable to the language in the Senate bill and should be substituted. The local option tax may result in some counties providing additional services and other counties refusing to do so. This will result in unequal services available across the state.

Testimony Against: The mental health system provides too much emphasis on medication to control people with a mental illness.

Persons Testifying: (In support) Senator Hargrove, prime sponsor; Jackie Der, Harborview Medical Center; Rick Lichtenstadter, Washington Defender's Association and Washington Association of Criminal Defense Lawyers; Rick Weaver, Washington Community Mental Health Council; William Waters, Washington State Clubhouse Council; Laura Groshong, Washington State Society for Clinical Social Work and Washington State Coalition of Mental Health Professionals and Consumers; Lenora Warden, Rose House; Victoria Roberts, Department of Corrections; Carlene Cloud, National Alliance for the Mentally Ill; Beth Dannhardt, Triumph Treatment Services; Pat Knox, Recovery Centers of King County; Seth Dawson, Washington State Psychiatric Association, National Alliance for the Mentally Ill of Washington, Seattle Mental Health, and Compass Health; Dave Stewart, Washington State Regional Support Networks; David Lord, Washington Protection and Advocacy System; Jean Wessman, Washington State Association of Counties; Laurie Lippold, Children's Home Society; Michael Watte; and Eleanor Owen and Kathleen Carter, National Alliance for the Mentally Ill of Washington.

(With concerns) Tim Brown, Department of Social and Health Services; Tom McBride, Association of Washington Business; and Linda Grant, Washington Association of Alcoholism and Addiction Programs.

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

Persons Signed In To Testify But Not Testifying: None.