

# HOUSE BILL REPORT

## SHB 1300

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### As Amended by the Senate

**Title:** An act relating to access to information on mental health services received by persons who have been committed for custody or supervision or who have been civilly committed after being found incompetent to stand trial for a felony.

**Brief Description:** Accessing mental health information.

**Sponsors:** House Committee on Human Services (originally sponsored by Representatives Hurst, Dickerson, Pearson, Klippert, O'Brien and Smith).

### Brief History:

#### Committee Activity:

Human Services: 1/28/09, 2/5/09 [DPS];

Health & Human Services Appropriations: 2/18/09, 2/25/09 [DPS(HS)].

#### Floor Activity

Passed House: 3/9/09, 97-0.

Senate Amended.

Passed Senate: 4/15/09, 45-1.

### Brief Summary of Substitute Bill

- Expands the list of entities and/or individuals who may obtain access to treatment history information under the Involuntary Treatment Act (ITA).
- Combines sections throughout the ITA which address the release of information to individuals and entities and the scope of information to be released.
- Renders inoperable any provision regarding the release of information which conflicts with federal requirements necessary for funding.

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### HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

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*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:** Linda Merelle (786-7092)

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## HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Human Services be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Pettigrew, Chair; Seaquist, Vice Chair; Schmick, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Appleton, Cody, Dickerson, Ericksen, Johnson, Miloscia, Morrell, O'Brien, Roberts, Walsh and Wood.

**Staff:** Carma Matti (786-7140)

### **Background:**

On New Year's Eve 2007, a young woman in Seattle was stabbed and killed. The person charged with the offense had significant mental illness diagnoses and was under the supervision of a Department of Corrections officer. As a result, in early 2008 and throughout the year, a work group of mental health professionals, law enforcement, prosecuting and defense attorneys, and others convened to address areas in the involuntary treatment system that could be modified or further developed to improve community safety.

The members of the work group learned that communication across systems was a general problem that the professionals who dealt with mentally ill persons faced every day. Many professionals are prohibited from communicating with others because of confidentiality laws. In some cases, even where no legal prohibitions existed, there was a perception of a prohibition of sharing information, and the information was not shared. Further, statutes regarding confidentiality are not all located in one place, and a determination of the kinds of data and communications allowed to be shared were sometimes laborious and complicated.

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for an involuntary civil commitment. Persons can be initially detained for up to 72 hours for evaluation and treatment, and upon a petition to the court and subsequent order, the person may be held for a further 14 days. Upon a further petition and order by a court, a person may be held for a period of 90 days. If a person has been determined to be incompetent and criminal charges have been dismissed, and the person has committed acts constituting a felony as a result of a mental disorder and presents a substantial likelihood of repeating similar acts, the person may be further committed for a period of up to 180 days. No order of commitment under the ITA may exceed 180 days.

The ITA contains provisions for a release of mental health services information to various entities, including the Department of Corrections, attorneys, law enforcement, and others. The provisions regarding who is entitled to receive confidential information and what persons are allowed to do with that information are contained in several different places throughout chapter 71.05 of the act. In some cases, the scope of the information that may be released to one entity, such as law enforcement, is limited.

### **Summary of Substitute Bill:**

A new section is created in RCW 71.05 to allow expanded access to mental health treatment history information to: (1) law enforcement, (2) public health officials, (3) the Indeterminate Sentencing Review Board, (4) prosecuting and defense attorneys, and (5) jail personnel. The new section also consolidates the provisions throughout RCW 71.05 regarding the release of confidential information.

**EFFECT OF SENATE AMENDMENT(S):**

Adds provision regarding the specific information which may be released under this act; clarifies the persons about whom mental health information may be released and the obligations of legal counsel of a mental health provider; adds "therapeutic court personnel" to the list of persons who may receive mental health information under this act and defines the term "therapeutic court personnel;" removes prosecuting attorneys, defense attorneys, and the court from the list of persons or entities to whom information shall be released; adds additional purposes for which information shall be released, including assessing a person's risk to the community and assessing a person's risk of harm to self or others when confined in a city or county jail; adds restrictions for requesting mental health information under this act, allowing such information to be released only if the person is engaged in an activity indicating that a crime or violation of community custody or parole has been committed or is likely to be committed, or the person is exhibiting signs of deterioration that may make him or her appropriate for civil commitment; adds a provision allowing the sharing of information among those persons or entities authorized to receive it under this act solely for the purpose of coordinating services for the person who is the subject of the request; allows sharing of information with a prosecuting attorney acting in an advisory capacity for the person or entity that receives information; limits the information that may be released in response to an oral request in an emergency situation to whether an offender is being treated and the offender's whereabouts.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony (Human Services):**

(In support) The inability to share information in the past has led to catastrophic incidents. The intent of this bill is to prevent catastrophic incidents by taking intervention actions. A current provider may not be able to provide information about a person in law enforcement regarding treatment that may assist a police officer or others. Without this bill, the prosecutor and a detective cannot have communications regarding the mental health of a person even as a result of a hearing pursuant to the ITA. Usually, mental illness is a mitigating factor and may lead to lower charges. However, it may lead to higher bails. It is necessary to break down communication barriers but still preserve privacy.

(With concerns) There may be some unintended consequences to this bill which will affect clinical social workers who provide mental health services. If individuals become concerned

that their mental health information may be revealed without their consent, a client's ability to share information with a provider as a part of their treatment may be stifled. While the intent of the statute is important, increased access to mental health information does not help that goal when providers are already mandatory reporters.

(Opposed) None.

**Staff Summary of Public Testimony (Health & Human Services Appropriations):**

(In support) There is a long history of persons with mental illness coming into the criminal justice system and this is an opportunity to prevent that from happening. There are many people who, if they had the help they needed to function in society, would have remained in society and lead productive lives. Some people have committed horrific acts because they didn't get the assistance they needed. A single case where someone gets killed costs the state far more than intervention would have cost. This hallmark legislation is a universally accepted instrument for the Satterburg workgroup for getting persons with mental illness the help they need and for protecting individuals walking down the street. This is a great first step to breaking down the barriers in communication. Police officers will be better informed and can provide a better response to a person who has mental illness. This will help inform the process on whether to give a person a break on charges or if more is needed to protect and prevent someone from committing a violent act.

(Opposed) None.

**Persons Testifying (Human Services):** (In support) Representative Hurst, prime sponsor; Ethan Rogers, King County Prosecutor's Office; James Adams, National Alliance on Mental Illness-Washington; and Eleanor Owen, National Alliance on Mental Illness-Greater Seattle.

(With concerns) Laura Groshong, Washington State Society for Clinical Social Workers.

**Persons Testifying (Health & Human Services Appropriations):** Representative Hurst, prime sponsor; and Ethan Rogers, King County Prosecuting Attorney Official.

**Persons Signed In To Testify But Not Testifying (Human Services):** None.

**Persons Signed In To Testify But Not Testifying (Health & Human Services Appropriations):** None.