

SENATE BILL REPORT

SB 5106

As of January 18, 2017

Title: An act relating to clarifying obligations under the involuntary treatment act.

Brief Description: Clarifying obligations under the involuntary treatment act.

Sponsors: Senator O'Ban.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 1/17/17.

Brief Summary of Bill

- Requires a revocation petition for a less restrictive alternative order (LRA) under the Involuntary Treatment Act (ITA) to be filed in the county where the respondent is located or receiving treatment.
- Modifies a requirement for a designated mental health professional (DMHP) consult with an examining emergency room physician during a commitment evaluation.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Kevin Black (786-7747)

Background: The ITA allows for the civil commitment of persons who, as the result of a mental disorder, present a likelihood of serious harm or are gravely disabled. The ITA process starts with a 12-hour hold for investigation and evaluation by a DMHP, which can be followed by 72-hour detention to a locked evaluation and treatment facility. For detention to extend beyond this 72-hour period, the treatment facility must file a 14-day treatment petition in superior court, followed by a 90-day treatment petition. The detained person has the right to counsel and, in the case of a 90-day petition, a jury trial to contest the commitment. The facility may also request a 90-day LRA, which is a court order for involuntary outpatient treatment. Once a person is released from detention on an LRA, a petition for revocation of an LRA may be filed by a DMHP or by the Department of Social and Health Services, if the person has failed to follow treatment recommendations or significantly deteriorated and a return to inpatient treatment is appropriate.

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.

In 2013, the Legislature enacted Substitute Senate Bill 5456, which requires a DMHP performing a civil commitment investigation to consult with an examining emergency room physician regarding the physician's observations and opinions as to the person's condition and whether the physician believes that detention is appropriate. In 2016, Division Two of the Washington Court of Appeals decided *In re K.R.*, 195 Wash. App. 843. In this case, the court reversed the civil commitment of the petitioner because the DMHP failed to consult with an examining emergency room physician, in circumstances where the petitioner had been released from the hospital to a community treatment facility before the start of the DMHP evaluation.

In 2015, the Legislature enacted Engrossed Second Substitute House Bill 1450 which, among other things, changed rules for revocation of LRAs. Some jurisdictions have interpreted new statutory language adopted as changing the venue requirements for LRA revocation petitions by requiring the petition to be filed in the court that originally entered the LRA, instead of the court where the person is located or receiving treatment.

A section of the ITA expressing legislative intent instructs courts when they are construing ITA requirements to focus on the merits of a civil commitment petition, except where the requirements of the ITA have been "totally disregarded."

Summary of Bill: An LRA revocation petition must be filed with the court of the county where the person is currently located or being detained.

If a person subject to an ITA evaluation is located in an emergency room at the time of the evaluation, the DMHP must take serious consideration of observations and opinions by an examining physician, advanced registered nurse practitioner, or physician assistant as to whether detention under the ITA is appropriate. The DMHP must document the DMHP's consultation with this professional, if the professional is available, or the DMHP's review of the professional's written observations or opinions. This requirement does not create an exception to the general rule creating a presumption that courts should decide ITA petitions on their merits in deference to the state's interest in protecting the safety of individuals and the public.

Appropriation: None.

Fiscal Note: Not requested.

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: PRO: We support the bill. We request a technical amendment to clarify bill language.

CON: Please provide a better description of the medical staff which the DMHP is allowed to interact with when making the decision whether to detain an individual, to make sure those individuals are qualified according to definitions already provided in law. The consultation must be made in-person, rather than just reading notes in a medical chart. This safeguard is

necessary to protect against deprivations of liberty. Not everything is placed in the chart, and nothing substitutes for the give and take of a live conversation. We object to the presumption provided that civil commitment should be decided on the merits. This offends the Separation of Powers doctrine and will lead to harmful litigation. Revocation hearings should be held in the county where the witnesses are, and before the judge who best knows the history of the individual and the case.

Persons Testifying: PRO: Seth Dawson, National Alliance on Mental Illness, NAMI WA.

CON: Mike De Felice, WA Defender Assn. and WA Assn. of Criminal Defense Lawyers.

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