SENATE BILL REPORT
SB 6365

As of January 31, 2018

Title: An act relating to suspending the evaluation, detention, and commitment of persons with a substance use disorder when secure detoxification facility beds are not available.

Brief Description: Concerning suspension of the evaluation, detention, and commitment of persons with a substance use disorder when secure detoxification facility beds are not available.

Sponsors: Senators O'Ban, Darneille, Chase and Kuderer.

Brief History:
Committee Activity: Human Services & Corrections: 1/29/18.

Brief Summary of Bill

- Requires a designated mental health professional (DMHP) or designated crisis responder (DCR) to report to the Department of Social and Health Services (DSHS) when they determine that a person meets detention criteria as the result of a mental disorder, or substance use disorder and there are not any beds available at an evaluation and treatment facility (E&T) or secure detox facility.
- Requires DSHS suspend the operation and enforcement of evaluations, detentions, and commitments for persons with a substance use disorder if a total of 60 reports are submitted within any three-month period.
- Requires DSHS and the Health Care Authority (HCA) to pay or direct Behavioral Health Organizations (BHOs) and Managed Care Organizations (MCOs) to pay certified secure detoxification facilities and approved substance use disorder treatment programs for services provided to patients receiving voluntary treatment while the suspension is effective.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Keri Waterland (786-7490)

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.

Background: The Involuntary Treatment Act (ITA) provides for the civil commitment of persons who are found to have a mental disorder, and as a result are likely 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 health and safety needs. Effective April 1, 2018, the ITA is expanded to include detention based on a substance use disorder as well as a mental health disorder.

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 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 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 initial 12-hour detention period, the DMHP may not detain the person and must report this fact to DSHS, which must summarize data relating to instances where detention is not possible for a person who meets detention criteria in quarterly reports which DSHS must display on its website. For persons who are detained, 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.

Once the ITA is expanded to include investigation and detention for substance use disorders, the law will authorize detention to a secure detoxification facility or approved substance abuse disorder treatment program. At this time, DMHPs will be renamed DCRs.

Summary of Bill: The requirement for a DMHP or DCR to report to DSHS when they determine that a person meets ITA detention criteria as the result of a mental disorder and there are no beds available at an E&T is expanded to include a duty to report when a person meets ITA detention criteria due to a substance use disorder and there are no beds available in a secure detox facility or approved substance use disorder treatment program. The DMHP must identify whether the person met detention criteria as a result of a mental disorder or a substance use disorder.

DSHS must suspend the operation and enforcement of evaluations, detentions, and commitments for persons with a substance use disorder if a total of 60 reports are submitted within any three-month period. The suspension is effective on the tenth business day after DSHS provides notice to BHOs, DCRs, secure detoxification facilities, and hospitals describing the suspension and stating the effective date of the suspension.

The suspension terminates 45 calendar days after DSHS issues a resumption notice to BHOs, DCRs, secure detoxification facilities, and hospitals. DSHS may issue a resumption notice only if it determines 48 additional secure detoxification beds, including at least one additional 16-bed secure detoxification facility located in Eastern Washington, are operational.

DSHS and HCA must continue to pay or direct BHOs and MCOs to pay certified secure detoxification facilities and approved substance use disorder treatment programs for services provided to patients receiving voluntary treatment while the suspension is effective.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: We are concerned that we do not have increased capacity to support this population, and support the underlying premise of the bill. There are going to be a total of 48 beds statewide, which is not enough to treat the need. Limited data shows about 10,000 visits a month to hospital ERs are individuals with substance use, with about half being their primary diagnosis. No increased funding is provided for DCRs, and secure detox facilities beginning April 1, 2018, will not be able to help individuals with withdrawals from alcohol. There are not enough services or capacity to fit the projected need and referrals. Pilot data in Spokane, referred three people per day for evaluation from DCRs. This is an entirely new standard, there is no admission criteria for substance use disorder right now. We remain committed to providing high quality and compassionate health care, but are concerned about the capacity for these new services. Lack of capacity and consistent options puts patients, families, and hospitals at risk. About one in three ER visits now results in an ITA referral, if applied to substance use disorder, it could be 1000 people from one ER alone. We embrace the policy but are cautious about deploying without the ability to deal with a capacity increase. We try to make these folks voluntary, if not, they may be referred to shelters or emergency services. We are not sure what to do if

there are no beds, the process is not clear, and CDRs will default to conservative referrals until we know what we are supposed to do. Until we turn on this law, we do not know how many people we may need to serve, this bill provides a safety valve and stop gap if we are turning away those who need services but the capacity is not there.

CON: This law will save people, please do not take this away from us. Parents get calls from the ER to come get their children, which is the only right they have right now. The person cannot be involuntarily committed. Addicts need help and treatment, and I have seen firsthand how Narcan brought my daughter back to life. I did not call services because there was nothing they could do. This law gives me the right to be her parent again, to commit her for up to 72-hours involuntarily. People will continue to refuse voluntary treatment with no option for involuntary commitment. Many physical health issues come from substance use, and many issues with mental health and substance use go hand in hand. Everyone deserves treatment. To stop this law through this bill, sends the message that they are not worthy. Let us show that Washington can be leaders in making a change. Many addicts end up out on the streets and do not realize they need help. Ricky's Law minimizes roadblocks to people to get the help they need. This should not happen when we talk about our children's lives. Currently, addiction is not considered a danger to self situation for involuntary commitment. Private insurance is more helpful than state insurance because there are fewer rules. The window of opportunity closes soon.

Persons Testifying: PRO: Senator Steve O'Ban, Prime Sponsor; Chelene Whiteaker, Washington State Hospital Association; Sam Huber, MD, MultiCare Health System; Brigette Foltz, Harborview Medical Center; Cameron Buck MD, UW Valley Medical Center.

CON: Lauren Davis, citizen; Lori Cross, citizen; Pamela Kirgin, The Addict's Mom; Kim Lawrence Thomas, citizen; Ed Petersen, Not One More; Michelle Karrer, citizen.

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