

# SENATE BILL REPORT

## SB 6109

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As of February 28, 2020

**Title:** An act relating to ensuring persons with serious mental illness and substance use disorders receive proper care and assistance.

**Brief Description:** Ensuring persons with serious mental illness and substance use disorders receive proper care and assistance.

**Sponsors:** Senators O'Ban, Becker, Hasegawa, Muzzall, Wagoner and Zeiger.

**Brief History:**

**Committee Activity:** Behavioral Health Subcommittee to Health & Long Term Care: 1/31/20.

**Brief Summary of Bill**

- Establishes a four-year pilot in King, Pierce, and Snohomish counties to create executorships for persons who are incapable of caring for their health and well-being due to a behavioral health disorder.
- Establishes requirements for services to be made available during the executorship including supportive housing, treatment, and vocational rehabilitation.
- Provides court procedures to establish one-year renewable executorship terms with powers similar to guardianship.

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### SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

**Staff:** Kevin Black (786-7747)

**Background:** The Health Care Authority (HCA) is the state behavioral health authority. HCA administers the Medicaid program and other services including services for persons with behavioral health disorders.

Involuntary Treatment Act. Under the Involuntary Treatment Act (ITA), a person may be detained and ordered to undergo involuntary behavioral health treatment if the person, as a

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result of a mental disorder, poses a likelihood of serious harm or is gravely disabled. A designated crisis responder (DCR) is responsible for investigating and determining whether to detain an individual who may be in need of involuntary treatment. In emergency situations where the likelihood of serious harm or grave disability is imminent, the DCR may detain a person without a court order for up to 72 hours. By making appropriate findings, the superior court may authorize up to 14 additional days of involuntary treatment. In nonemergent situations, the DCR may detain a person only upon a court order.

Guardianships of Incapacitated Persons. Any person or entity may petition the court for the appointment of a guardian or limited guardian for an allegedly incapacitated person who may be either an adult or minor. A person may be incapacitated, either in their person or estate, when the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety; or a significant risk of financial harm. An incapacity determination is a legal decision, not a medical decision. However, prior to an incapacity determination a medical report must be filed with the court by a licensed doctor or psychologist detailing the health history and specific needs of the alleged incapacitated person.

Following a court hearing determining incapacity, the court appoints a guardian who exercises the legal rights of the incapacitated person. The court may establish the extent and duration of the guardian's power as a decision-maker for the incapacitated person. A full guardianship transfers authority for all major decisions to the appointed legal guardian. A standby or limited guardianship may assume some or all of the duties, responsibilities, and powers of a full guardianship. Standby or limited guardianships may be limited to one area, such as estate or property matters, or may have full powers for a limited duration in the absence of the guardian.

When a guardianship has been established, incapacitated persons may lose the right to:

- marry, divorce, or enter into a domestic partnership;
- vote;
- enter into a contract, or make or revoke a will;
- have a driver's license and drive;
- buy, sell, own, or lease property;
- consent to or refuse medical treatment;
- decide who will provide care; and
- to make decisions regarding social aspects of life.

In Washington, there are professional guardians, public guardians, and lay guardians. A lay guardian may be a member of the incapacitated person's family. A professional guardian is not a member of the incapacitated person's family and charges fees for carrying out the duties of a court-appointed guardian. Professional guardians may be a person, a professional agency, or a corporate fiduciary such as a nonprofit corporation or bank trust department.

A public guardian is a professional guardian that provides guardianship services under a contract with the Office of Public Guardianship for incapacitated persons who are:

- age 18 or older;
- whose income level does not exceed 200 percent of the federal poverty level; or

- are receiving long-term care services through the Washington State Department of Social and Health Services.

Professional guardians are certified and regulated by the Certified Professional Guardianship Board (CPGB) established by court rule. The CPGB establishes standards of practice for professional guardians, and may investigate grievances and sanction professional guardians for violations of those standards. The court has supervisory power over all types of guardianships, and may modify a guardianship or remove a guardian upon petition and showing of good cause. A court may receive complaints regarding an incapacitated person under a guardianship, and the court has authority to investigate or issue emergency orders to protect the incapacitated person. Guardianship monitoring programs are not required by state law, nor are there any statewide monitoring standards applied by courts. A few county courts use volunteers to review reports required to be filed by guardians.

**Summary of Bill:** HCA must create a pilot program in King, Pierce, and Snohomish counties effective January 1, 2021, through December 31, 2025, to establish an executor program for persons incapable of caring for their own health and well-being due to a mental disorder or substance use disorder, as evidenced by frequent detention under the ITA, meaning at least five detentions in the most recent 12-month period. Persons served through the program may reside at home or in supported housing. The pilot must serve up to ten persons in each county.

In the pilot counties, a court appointed resource executor (CARE officer) may conduct an executorship investigation of a person suspected of meeting program criteria who is referred to the CARE officer by one of the following:

- the county sheriff;
- county mental health or social services department director;
- professional person in charge of a behavioral health agency or intensive treatment facility; or
- director of a hospital providing general acute care.

The person may be in jail, in treatment, or in the community at the time of the investigation. Following investigation, the CARE officer may file a petition with superior court to establish an executorship. The executorship must be the least restrictive alternative for the person and shall expire in one year unless a new petition is filed. The CARE officer must consider medical, mental, financial, social, family, and work circumstances and consult with relevant witnesses before providing a written report shared with the court and, to the extent permitted by privacy laws, the person who made the referral. The court may grant powers and duties to the CARE officer, who shall have a fiduciary duty to protect and care for the person. The court may impose legal disabilities on the person subject to the executorship. The petition by the CARE officer may designate another person to assume executor responsibilities if the petition is granted, who may be an immediate family member or other close relative. The person subject to the executorship may petition the court at any time to contest the executorship. All court hearings must be scheduled within 30 days and the court must notify the parties 60 days before the end of the executorship and provide an order of termination if the executorship is allowed to expire. The person subject to the executorship has the right to appointed counsel if not already represented.

Facilities providing treatment to a person who is the subject of an executorship petition must disclose information and records to the CARE officer that would facilitate the investigation.

Before qualifying for the pilot program, King, Pierce, and Snohomish counties must meet certain requirements, including making available sufficient resources to provide housing, treatment, vocational rehabilitation, veterans' services, and family support and consultation, in an age-appropriate, disability-appropriate, and culturally appropriate manner.

This act may be known and cited as the Caring for Those With Behavioral Health Disorders Act.

**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:** PRO: There is a cycle of despair created when persons with significant illnesses do not believe they are ill, do not take medication, are admitted to a behavioral health facility or jail, get released, and go back to the community with no structure or accountability and no one to insist they get care. The cycle then repeats itself. There are no real options for these individuals. This pilot will help. The idea came from California where the Legislature adopted this for San Francisco, San Diego, and Los Angeles. Think of these individuals as our adult children, wasting away because the government has no way of insisting that they get the care that everyone knows they need. The only individuals who qualify have been detained five times in 12 months so concern for their civil liberties is misplaced; the alternative is jail or an involuntary treatment facility. My son died from suicide in a state of bipolar psychosis. Who should have caught him before his illness got so dangerous? A therapist from California asked me why my son was not being conserved. We need to clean up our systems of care. My son was on the street days after his discharge to a clean and sober house. He would not have three felonies on his record had they not turned him loose when they did. The current mental health system is not working and it costs the state a ton of money. Patients are released too soon and with too little planning or support. I hear from first responders every day about the gap between voluntary services and involuntary treatment, where no viable option is provided for those who are most acute, symptomatic, and needful of care. This bill would put a point person in place to be responsible for a person's care. If the point person is held accountable by a judge, you have the ingredients in place to do something meaningful. Law enforcement officers want to help keep fellow human beings safe and they think this bill would help. A "nudge from the judge" worked for my son on several occasions leading to periods of recovery. But there were not enough programs available and those there were not adequate. A higher authority is needed when a person is not competent to make decisions for themselves. Protecting civil liberties and autonomy is important, and person-centered approaches. Normalizing a person's illness, and the decisions they make when they are most incapacitated, is not person-centered. We need to protect people during serious episodes of decompensation in order to increase their ability to live independently and preserve their

dignity, resources, and freedom of choice. Give health care providers and family members the tools they need to promote recovery. Please loosen the bill's eligibility requirements so more people can be covered and amend the bill to ensure it covers military veterans. In 30 years, we have never encountered a situation where concern for our son's civil rights helped him more than treatment would have, however he could get it. The red tape involved with outpatient treatment makes it nearly impossible to get help for family members. No amount of voluntary treatment will suffice for some patients. The care they receive is fragmented and uncoordinated. My son still believes that he does not have a mental illness. What happens when aging parents can not care for their adult children any longer? We need HIPAA reform. If my son had a caregiver, he could have hope.

CON: We agree that more tools are needed to help people. Guardianship is the wrong mechanism. It represents a complete loss a civil liberties. High standards are needed to judge when someone lacks capacity. There are other options. This could go sideways and be used as a mechanism to hurt people. We support more treatment options but they should either be voluntary or imposed through the ITA process. The government should not lead the charge. This is a medical issue and the medical community should lead a response that is informed by evidence. The talk of despair discourages those who have found recovery. This sets us back as a peer movement that tries to raise people up. Expanding peer support would be a more promising approach. If you make the services described in the bill available without coercion, with people there to establish a relationship and build trust, it would be much more effective. Services aren't being offered in a way that would make them attractive. Forced treatment has consequences and undermines therapeutic relationships.

OTHER: We are concerned about adding new layers of legal process rather than adding treatment opportunities or housing resources. This bill will restrict civil liberties without getting to the desired outcomes. Additional resources, including facility-based diversion options like residential mental health treatment and crisis triage, would be more effective. My son has had seven ITAs since June 2018. If the treatment promises are not followed through the program will fail. It is very expensive to invest in months of inpatient services and waste the progress by not providing adequate community support.

**Persons Testifying:** PRO: Senator Steve O'Ban, Prime Sponsor; Donald Bremner, citizen; Linda Hyatt, citizen; Kim Zacher, Comprehensive Life Resources; Carol Berry, citizen; Mike Berry, citizen; Steve Strachan, Washington Association of Sheriffs and Police Chiefs; Kimberly Hendrickson, City of Poulsbo; Jerri Clark, MOMI-Mothers of the Mentally Ill; Jeannette Burton, citizen; Patricia Horne-Brine, citizen; Theresa Yates, citizen.

CON: Melanie Smith, NAMI Washington; Laura Van Tosh, citizen; David Lord, Disability Rights Washington.

OTHER: Angela Daniels, Disability Rights Washington; Celia Jackson, King County.

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