

HOUSE BILL REPORT

2SHB 2882

As Passed House:
February 16, 2010

Title: An act relating to detaining persons with mental disorders.

Brief Description: Detaining persons with mental disorders.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Klippert, Green, Dammeier, Dickerson, Kelley, Wallace and McCune).

Brief History:

Committee Activity:

Human Services: 1/25/10, 1/28/10 [DPS];

Ways & Means: 2/6/10, 2/8/10 [DP2S(w/o sub HS)].

Floor Activity:

Passed House: 2/16/10, 98-0.

Brief Summary of Second Substitute Bill

- Changes the standard for 72-hour emergent detention under the Involuntary Treatment Act and the Integrated Crisis Response and Involuntary Treatment Pilot Program from "imminent likelihood" of serious harm or danger to "substantial likelihood" of serious harm or danger; detentions under the new standard may be authorized without a court order.
- Requires the Department of Social and Health Services to track and review the outcomes of the 72-hour, 14-day, and 90-day detentions as a result of the change in the standard of emergent detention, and annually report to the Legislature.
- Requires that the provision of the act expire June 30, 2014.
- Allows designated crisis responders or designated mental health professionals, when making a determination for a 72-hour detainment, to consider information provided by family members or others who have had significant contact with the individual or who are familiar with the individual's history.

HOUSE COMMITTEE ON HUMAN SERVICES

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.

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; Darneille, Green, Herrera, O'Brien and Walsh.

Staff: Linda Merelle (786-7092).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Human Services. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick and Seaquist.

Staff: Carma Matti-Jackson (786-7140).

Background:

Involuntary Treatment Act.

The Involuntary Treatment Act (ITA) sets forth the procedures, rights, and requirements for a civil commitment. Under emergency circumstances, persons may be detained without a court order. Under non-emergent conditions, a court order is required for an involuntary civil commitment. A person may also apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder. Any person voluntarily admitted must be released immediately upon his or her request unless the professional staff believes that the person presents a likelihood of serious harm or that he or she is gravely disabled. In which case, the professional staff may detain the person for sufficient time to notify the designated mental health provider.

Integrated Crisis Response and Involuntary Treatment Pilot Program.

The Integrated Crisis Response and Involuntary Treatment Pilot Program (ICR) authorizes involuntary detention and treatment of an individual who is gravely disabled or a danger to self or others due to a chemical dependency or a combination of a chemical dependency and mental illness (co-occurring disorder).

Emergent Detention.

A person may be detained for up to 72 hours without a court order under emergency circumstances when a designated mental health professional receives information that a person, as a result of a mental disorder, presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled. "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

Non-Emergent Detention.

After investigating information received that a person is either gravely disabled or that there is a substantial likelihood that the person will cause serious harm to self or others, a designated mental health professional may assess the credibility of the information received, and attempt to interview the person about whom the information has been provided to see whether the person will voluntarily seek appropriate treatment. If the designated mental health professional is satisfied that the information is credible and the person will not voluntarily seek treatment, he or she may file a petition with the court for an initial detention of 72 hours for evaluation and treatment.

Upon petition and order by a court, a person may be held for an additional period of 14 days and a subsequent 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 Washington Supreme Court has held that the standard of "likelihood of substantial harm" evidenced by a recent overt act under the ITA provides a constitutional basis for detention under non-emergency circumstances. For temporary detentions without prior process or court order when there is an emergency, there must be a showing of "imminent danger" to justify such detention.

Summary of Second Substitute Bill:

The standard for temporary 72-hour detention under emergency conditions is changed from "imminent likelihood" of serious harm to "substantial likelihood" of serious harm for the ITA and for the ICR.

The new standard would also apply to persons who have sought treatment voluntarily but who wish to leave a facility where the professional staff believes that the person is either gravely disabled or likely will cause serious harm.

Under the new standard, the designated mental health provider (under the ITA) and the designated crisis responder (under the ICR) are authorized to detain a person for an initial 72-hour evaluation under a "substantial likelihood" of harm standard. A peace officer may immediately take such person into custody and deliver him or her to a crisis stabilization unit, evaluation and treatment facility, emergency department of a local hospital, or for the ICR program, a secure detoxification facility or other certified chemical dependency treatment provider. When taken into custody by a peace officer, the person may be held for up to 12 hours.

Before authorizing the detention of a person, orally or in writing, the designated mental health provider or designated crisis responder will be required to investigate and evaluate the specific facts alleged and their reliability and the reliability and credibility of the person providing the information. He or she is not required to interview the person prior to detention, file an affidavit with the court, or obtain a court order for the initial 72-hour

detention. The designated mental health professional may consider information provided by a family member, landlord, neighbor, or others with significant contact and history of involvement with a person being considered for detention for evaluation and treatment.

The Research and Data Division of the Department of Social and Health Services (DSHS) will track and review the outcomes of the 72-hour, 14-day, and 90-day commitments under the ITA and the ICR as a result of the change in the standard of emergent detention.

The DSHS will annually report to the Legislature regarding the outcomes beginning October 1, 2011, and a final report will be due on October 1, 2013.

The act expires on June 30, 2014.

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) Changing the standard for detention will increase public safety. The bill reduces the burden of proof to detain someone so that their condition can be stabilized. This bill is one step forward toward allowing earlier intervention to offset the cost of looking at cases sooner rather than later.

(Opposed) None.

Staff Summary of Public Testimony (Ways & Means):

(In support) While there are cost issues here that are being examined, consider the cost issues if legislation of this nature is not acted upon. There is a human and fiscal cost when early intervention does not happen when someone's mental condition is deteriorating to the point where they pose a substantial risk to someone else. Families feel anguish when their loved one has hurt someone because they have asked numerous times for help, they have tried to alert the authorities to the potential dangers, and the system does not respond. This bill will increase access to mental health treatment and it will enhance public safety. The costs and the impact of these changes are unknown. It is time to find out whether or not these procedures work, what they cost, and what they save in terms of finances, human life, and human misery. This bill is a responsible approach.

(In support with concerns) The goal of the bill and the intent for public safety are fully supported, but resources need to be provided to support that goal. Many of the treatment facilities around the state are at capacity. When we have persons who are civilly committed and there are no certified psychiatric beds available, people are restrained in hospital emergency room beds. This is an extremely difficult situation. Currently one out of every four persons civilly committed in King County is being treated in a single certification bed.

Because this bill will make it easier to detain individuals, it will put further strain on the system. Substantial cuts have been taken in the community mental health system for the 2009-11 biennial budget. This bill does support the goal for public safety but if it moves forward, please make sure there are appropriate resources made available for implementation.

(Opposed) None.

Persons Testifying (Human Services): Representative Klippert, prime sponsor; and Seth Dawson, National Alliance on Mental Illness.

Persons Testifying (Ways & Means): (In support) Representative Klippert, prime sponsor; Seth Dawson, National Alliance on Mental Illness.

(In support with concerns) Rashi Gupta, Washington State Association of Counties.

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

Persons Signed In To Testify But Not Testifying (Ways & Means): None.