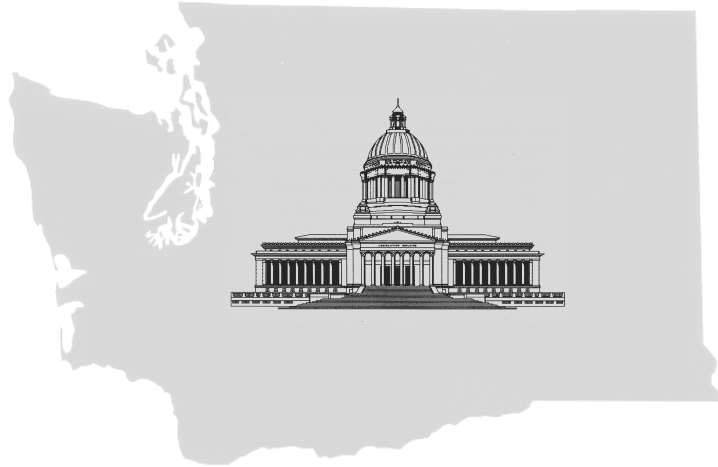


State of Washington
Joint Legislative Audit and Review Committee (JLARC)



**Involuntary Commitment of Mentally Ill
Persons: Study of the Impact of SSB 5562**

Briefing Report 99-14

December 1, 1999

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**INVOLUNTARY
COMMITMENT OF
MENTALLY ILL PERSONS:
STUDY OF THE IMPACT OF
SSB 5562**

BRIEFING REPORT 99-14

REPORT DIGEST

DECEMBER 1, 1999



STATE OF WASHINGTON

JOINT LEGISLATIVE AUDIT AND
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Involuntary Commitment Of Mentally Ill Persons: Study of the Impact of SSB 5562

This mandated study examines the general impact of SSB 5562, a bill pertaining to the involuntary commitment of mentally ill persons enacted during the 1997 Legislative Session. The intent of the bill was to provide a tool to help break what for some individuals was seen as a “revolving door” of involuntary commitment, followed by release and eventual decompensation, leading to repeated re-hospitalizations or interventions with law enforcement. The bill’s focus was quite narrow. Its main provision was the addition of a new section to the involuntary commitment statutes that provides, in part, that when considering whether to continue a less restrictive alternative commitment:

. . . great weight shall be given to evidence of a prior history of decompensation and discontinuation of treatment resulting in: (1) repeated hospitalizations; or (2) repeated peace officer interventions . . . (RCW 71.05.285)

MAJOR FINDINGS

- The Act does not appear to have contributed to an increase in the number of petitions filed or granted to extend a less restrictive alternative commitment (LRA). Although the total number of LRA extensions has gone up since the passage of SSB 5562, the increase is generally confined to only a few counties, and in those counties the increase is not generally seen as being attributable to the legislation.
- Despite the fact that the Act does not appear to have contributed to an increase in LRA extensions, it is still perceived fairly positively by the County Designated Mental Health Professional (CDMHP) supervisors who responded to a survey we conducted. (By law, CDMHPs are the only persons authorized to file a petition to extend an LRA.)

Of those expressing an opinion, slightly more than half felt the Act had been at least “somewhat successful” in contributing to reduced inpatient hospitalizations and criminal behavior. Three-quarters, however, felt the Act had been at least a “somewhat useful” tool for dealing with persons who have a history of decompensating and discontinuing treatment.

- The potential impact of the Act has likely been affected by a lack of familiarity with its provisions by key decision making individuals within the mental health system.

Five of the twenty-eight CDMHP supervisors who responded to our survey indicated they themselves were either “not very” or “not at all familiar” with the Act prior to receiving our survey.

More significantly, over 40 percent of those responding felt that other key decision making individuals within their own local systems—including mental health case managers, judges and court commissioners—were not very familiar with the Act or its provisions.

RECOMMENDATION

The study recommends that the Mental Health Division of the Department of Social and Health Services:

- a) Take steps to ensure that all counties have available all the information they need to utilize the provisions of SSB 5562, and
- b) Coordinate a discussion among all components of the mental health system to determine how key information can best be communicated and disseminated in the future.

RECOMMENDATION

The Department of Social and Health Services' Mental Health Division should:

- a) Take whatever steps it deems most appropriate to ensure that all counties have available sufficient information to utilize the provisions of SSB 5562, and
- b) Coordinate a discussion among the various components of the state's mental health system on how key information, particularly statutory changes affecting mental health, can best be communicated and disseminated throughout the mental health system, and other systems as appropriate (e.g., the criminal justice system).

TABLE OF CONTENTS

BRIEFING REPORT	1
INTRODUCTION	1
BACKGROUND	1
FINDINGS	3
CONCLUDING DISCUSSION	6
RECOMMENDATION	7
AGENCY RESPONSE	7
ACKNOWLEDGEMENTS	7
APPENDIX 1 - SCOPE AND OBJECTIVES	9
APPENDIX 2 – AGENCY COMMENTS	11

BRIEFING REPORT

INTRODUCTION

This mandated study examines the general impact of SSB 5562, a bill pertaining to the involuntary commitment of mentally ill persons enacted during the 1997 Legislative Session. For reasons explained below, this study is a more limited review of the Act's impact than what might be expected given the wording of the statutory mandate.

BACKGROUND

The Bill's Purpose

The purpose of SSB 5562 was to provide a tool to help break what for some individuals was seen as a "revolving door" of involuntary commitment, followed by release and eventual decompensation, which would lead to repeated re-hospitalizations and/or interventions with law enforcement.

Under the prior law, when a person was involuntarily committed—either in an intensive, inpatient setting, or on a less restrictive alternative (i.e., outpatient) commitment—continued commitment could only be ordered if the person continued to present a likelihood of serious harm, or was gravely disabled. Some courts and mental health officials reportedly interpreted this as requiring evidence of *recent, overt* acts. The problem was that while in treatment and taking medications, many individuals are stabilized and thus do not engage in the type of behavior that would lead them to be committed. As such, there would be no recent, overt acts, and consequently the courts would not order continued treatment. For some individuals, as soon as court mandated treatment was stopped, they would begin to decompensate, and the cycle would begin again.

What The Legislation Did

The main provision of this legislation was the addition of a new section to the involuntary commitment statutes that only applies to *less restrictive alternative commitments* (also called LRAs). These types of commitments are essentially synonymous with mandatory outpatient treatment and are in contrast to the more intensive, inpatient commitments. The new section provides that in determining whether or not someone is gravely disabled for the purpose of continuing a less restrictive alternative commitment:

. . . great weight shall be given to evidence of a prior history of decompensation and discontinuation of treatment resulting in: (1) repeated hospitalizations; or (2) repeated peace officer interventions (RCW 71.05.285)

To some observers, this provision did not actually represent a significant policy change. Rather, it was seen as simply codifying existing case law in order to focus increased attention on possibilities that were already available. This is illustrated in the following excerpt from the legislature's statement of intent regarding SSB 5562:

It is the intent of the legislature to enhance continuity of care for persons with serious mental disorders that can be controlled or stabilized in a less restrictive alternative commitment. Within the guidelines stated in In Re LaBelle, 107 Wn.2d 196 (1986), the legislature intends to encourage appropriate interventions at a point when there is the best opportunity to

restore the person to or maintain satisfactory functioning (RCW 71.05.012)

The impact of the legislation was anticipated to be quite limited in terms of the number of people who would be directly affected by its provisions; potentially no more than 100, and possibly as few as 50.

Study Scope

SSB 5562 requires the Joint Legislative Audit and Review Committee (JLARC) to

. . . perform an evaluation of the effect of [the] act upon persons who have been repeatedly involuntarily committed and . . . measure the overall fiscal impact of the act. (Chapter 112, Laws of 1997, Sec 39).

A more limited review of the Act's impact is justified for the following reasons.

- The study mandate more appropriately relates to an earlier version of the bill that was much broader in application than the version that was ultimately enacted. Specifically, while the final version only applies to less restrictive alternative commitments, the earlier version would also have applied to intensive, inpatient commitments. That feature was expected to have a significant fiscal impact. The final fiscal notes filed on the bill (as enacted) estimated no fiscal impact. Not amending the original study language to reflect the narrowed scope of the bill was likely an oversight.
- The Act did contain a second provision with potential fiscal impact. This provision added language to the reasons a person on conditional release could be detained for a revocation hearing. That change was essentially superceded, however, by the enactment of 2SSB 6214 in 1998. Not only would it be difficult at this time to assess the fiscal impact caused by *just* the SSB 5562

change, it is also a moot point in light of the later amendment.¹

Thus, this JLARC study is a limited review that focuses on three main areas: 1) the extent to which the Act has contributed to increasing the number of petitions filed and granted to extend a less restrictive alternative commitment; 2) whether the Act is perceived as having had an impact in terms of either reducing inpatient hospitalizations or criminal behavior, and 3) whether there have been any significant problems related to implementation of the Act.

A Note About Methodology

Data are not reported or maintained on a statewide basis for items considered to be key indicators for this study, specifically the number of less restrictive alternative commitments and the number of such commitments that are extended. To obtain this information, as well as opinions about the general effectiveness of the Act, we surveyed County Designated Mental Health Professional (CDMHP) supervisors for each county or group of counties within the state. This group of mental health professionals was selected because, by law, they are the only ones specifically authorized to file a petition to extend a less restrictive alternative commitment.²

A mail survey was used to gather data on the number of LRA extensions, as well as opinion information. A total of 28 responses, representing 30 of the state's 39 counties were received (with the 30 counties accounting for over 91 percent of the state's population). Six of the responses indicated that the numbers provided for LRA extensions were estimates. A separate telephone survey was used to gather information on the number of individuals on less restrictive alternative commitment at any one time. Here, information was received for 31 counties but, in most instances, it was based on estimates. In light

of this, the figures reported in this study with respect to the number of LRA extensions, and particularly to the number of LRA commitments, should be considered general estimates of magnitude.

FINDINGS

How Prevalent Are Less Restrictive Alternative Commitments?

Based on our survey of CDMHP supervisors, we estimate that, statewide, the number of individuals that are on an LRA commitment at any one time is in the range of from 860 to 875.³ There is, however, substantial variation in the reported incidence rate of LRAs by county. At least in part, this is likely attributable to local differences in treatment philosophy. Pierce County staff, for example, acknowledge that they are very positively inclined toward using LRA commitments as a treatment tool.

Has The Number Of LRA Extensions Increased As A Result Of SSB 5562?

Although the total number of LRA extensions has gone up fairly substantially since the passage of SSB 5562, the increase is generally confined to only a few counties, and in those counties the increase is not generally seen as being attributable to this legislation.

Among the 30 counties responding to our survey, the total number of LRA extensions recorded during the first six months of 1997—before the law took effect—was 125. The numbers recorded for the same six-month period in 1998 and 1999 were 177 and 204, respectively. However, only six counties reported experiencing an increase between 1997 and 1999, and in some cases the increase was quite small (e.g., from 0 to 4, from 8 to 10).⁴ One county—Pierce—accounted for more than half of the total increase, but staff there did not attribute it to

SSB 5562.⁵ In fact, in only one county did the CDMHP supervisor indicate that the increase was at least somewhat attributable to SB 5562. That was the county in which the number of LRA extensions increased from zero to four.

In telephone interviews, CDMHP staff from a number of counties—most notably Pierce, Spokane, and Benton/Franklin—reported that their offices were very actively involved with LRA commitments, and in seeking LRA extensions when deemed appropriate.⁶ Each noted, however, that their offices had already been active in this area prior to the passage of SSB 5562, and so this particular bill had not really impacted them. (As noted in the Background Section, according to some, SSB 5562 did not really *change* the law as much as it codified existing case law.) No county reported substantially increasing its usage of LRA commitments or extensions specifically as a result of SSB 5562.

How Is The Act Perceived By Individuals Familiar With The Processes And Issues Involved?

CDMHP supervisors responding to our survey were slightly more likely than not to feel that the Act had been at least somewhat successful in contributing to reduced inpatient hospitalizations and criminal behavior. Among all respondents, 36 percent felt that the Act had been at least “somewhat successful” in this area, compared to 32 percent who felt it had been either “not very” or “not at all successful.” (Among just those expressing an opinion, the percentages were 53 and 47 percent, respectively.)

In response to a more general question, CDMHP supervisors appeared to be more favorably disposed toward the perceived general value of the Act. The specific question was: “Generally, do you think this bill has been a useful tool for dealing with persons who have a history of

decompensating and discontinuing treatment?” The responses were as follows:

- 21 percent—Very useful
- 32 percent—Somewhat useful
- 11 percent—Not very useful
- 7 percent—Not at all useful
- 29 percent—No opinion/no answer

Among the positive comments received on the survey forms regarding the Act’s impact were the following:

For a handful of people/year, this bill has helped us keep them on less restrictive orders.

We do feel able to intervene with justification earlier in a person’s decompensation. We feel we have better grounds with history now relevant We feel we have a better tool to try and keep people stable. It is not enough but it is something.

Less positive comments included the following:

The judges/court commissioners still are basing decisions on imminency and not giving “great weight” to history.

Our courts still appear to base the decision to extend on current overt acts rather than placing great weight on history.

My impression is that judges are still somewhat reluctant to grant LRAs to some of our clients who need it.

We also spoke with members of a mental health advocacy group, that formed to advocate passage of the original legislation, to obtain their perception of the Act’s effectiveness. They acknowledged that the version of the bill that passed was much narrower than what they had originally proposed and supported. Not surprisingly, therefore, they generally reported that while

they felt the Act may have had some limited impact, it was probably less than they had hoped for. In general, most members indicated they felt it was still too difficult to get mentally ill individuals who are decompensating into treatment.

Have There Been Any Significant Problems Related to Implementation of SSB 5562?

Lack of Familiarity With the Act’s Provisions

The primary problem we identified related to implementation of the Act is the extent to which key decision making individuals within the mental health system are reported to be unfamiliar with its provisions.

Five of the twenty-eight CDMHP supervisors who responded to our survey indicated that they themselves were either “not very” or “not at all familiar” with the Act prior to receiving our survey. While in one context this could be considered a small minority, we consider it to be significant here because it is the CDMHPs who have responsibility for filing the petition to extend a less restrictive alternative commitment. This JLARC study has, however, contributed to an increased familiarity with the Act among CDMHP supervisors. CDMHP staff in at least four counties made comments that indicated they would likely become more active in this area as a result of learning about it through our study.

Perhaps more significantly, over 40 percent of the CDMHP supervisors who responded to our survey felt that *other* key decision making individuals within their own local system were not very familiar with the Act or its provisions. These “other” mental health decision makers include mental health case managers and clinicians prosecutors and judges. This is notable because while it is the CDMHP who must *file* the petition to extend an LRA commitment, it is typically the mental health

case manager or clinician who *requests* the petition and the judge or court commissioner who *approves* the petition.

Presumably because of Washington's decentralized mental health structure, no one agency was specifically charged with implementing the legislation, or with ensuring that key participants in the system were made aware of it. On a statewide basis, educational efforts appear to have been limited to the Washington Association of County Designated Mental Health Professionals (WACDMHP), which included an article on the legislation in one of its newsletters and included it as a discussion topic at one of its biannual conferences. (Staff within the Mental Health Division of the Department of Social and Health Services indicated their involvement was essentially limited to encouraging the WACDMHP to include an article in its newsletter.) At the local level, some county CDMHP offices reported contacting other key people within their local systems about the legislation (and in some cases even providing training on it), while others reported they did not.

Implementation Difficulties in Smaller Counties

The lack of familiarity with the provisions of SSB 5562 appears to be particularly pronounced in smaller counties, based both on the survey responses and our conversations with CDMHP supervisors. A deputy prosecuting attorney, who is familiar with involuntary commitment processes at Eastern State Hospital, went so far as to characterize SSB 5562 as an Act that has not yet been implemented in many of the smaller counties in that part of the state. This individual noted that many of these counties have not yet developed the required procedures, or otherwise laid the necessary groundwork, to process LRA extensions, including:

- Developing agreements and/or protocols with the local prosecutors and courts;
- Establishing procedures for funding defense attorney costs (which are required if the person is indigent);
- Arranging for the services of local physicians (since the law requires that a petition for involuntary commitment must include the signature of at least one physician); and
- Having the appropriate forms available.

The result, according to this source, is that many counties have not had the capability to extend LRA commitments, even in situations where it might have been appropriate to do so. This view was generally corroborated in conversations with a number of CDMHP supervisors in smaller counties as illustrated in the examples below.

Examples

- A CDMHP supervisor in one county, who had not been familiar with SSB 5562 prior to receiving our survey, reported that they had wanted to extend LRAs in the past, but had encountered a variety of problems similar to those noted above. The county has since convened a work group, consisting of the various key players in the local system, to develop the necessary procedures and protocols.
- CDMHP supervisors in two separate Eastern Washington counties reported they had been reluctant to pursue LRA extensions because of problems associated with securing defense attorney services. The problem in one of the counties was that the county only contracted with private attorneys to provide assistance in *criminal* cases, whereas LRA extensions are *civil* matters. The CDMHP supervisor in this county reported that he has recently been

able to obtain a waiver that will alleviate this problem.

- The CDMHP supervisor in yet another Eastern Washington county indicated there are situations where they would like to pursue an extension, but that they never do because of the practical constraints associated with having to travel over 100 miles to appear in court. The supervisor’s comments appeared to reflect a misunderstanding over which county’s court and prosecuting attorney would have venue in the event of an LRA extension. Specifically, the supervisor was under the impression that venue would remain in the county in which the Evaluation and Treatment Facility to which the individual was *initially* committed was located.⁷ Our understanding, however, is that in the event a less restrictive alternative commitment were continued, venue would change to the county in which the person under the commitment would be residing and receiving outpatient treatment.

Coordination Between CDMHPs and Case Managers

This issue is considered not so much a “problem” as it is a possible explanatory factor for why the impact of SSB 5562 has been comparatively limited. In conversations with CDMHP supervisors, we noted substantial differences in the extent to which they reported coordinating their “LRA extension activities” with treatment agency case managers and clinicians. This was particularly evident in those counties where the CDMHPs work in a different agency than the treatment personnel.

Specifically, in some counties, the CDMHPs actively monitor individuals on less restrictive alternative commitments, and at some set point prior to the scheduled ending date of the commitment (e.g., four or six weeks), they contact the case manager to see

if they desire to have an extension petition filed. In other counties, the CDMHP office takes a far more passive approach, simply waiting to see if the treatment provider will make a request. Not surprisingly, counties in the latter category tend to report having proportionately far fewer LRA extensions than counties in the former category. CDMHP staff in two of the historically “passive” counties did indicate that they may become more proactive in this area.

CONCLUDING DISCUSSION

The impact of SSB 5562, at least to date, has generally been limited. Nonetheless, its provisions have been used in some instances, and it is seen by a large majority of CDMHP Supervisors as a “useful tool” for dealing with persons who have a history of decompensating and discontinuing treatment.

The Act’s impact has likely been more limited than it otherwise would have been because of a lack of familiarity with its provisions. Overall, information about the Act appears to have been disseminated in an uneven manner, which probably reflects the decentralized structure of the state’s mental health system.

Irrespective of the cause, some counties remain unaware of the provisions of SSB 5562. To rectify this, the Department of Social and Health Services’ Mental Health Division –as the state’s mental health agency–should take whatever steps it deems appropriate to ensure that all counties have available all the information they need to utilize the provisions of SSB 5562. Further, to ensure that a similar situation does not reoccur, the Mental Health Division should coordinate a discussion among all components of the mental health system to determine how key information can best be communicated and disseminated in the future.

On a final note, this study itself has served to increase local awareness of the Act. As noted, CDMHP staff in at least four counties indicated they would likely become more active in pursuing less restrictive alternative commitment extensions as a result of learning about them through our study. And though it is not known whether it may be attributable to this study, CDMHP staff in two other (major) counties indicated they may become more proactive in contacting case managers to see if they want to pursue LRA extensions. These developments could result in SSB 5562 having more impact in the future.

RECOMMENDATION

The Department of Social and Health Services' Mental Health Division should:

- a) Take whatever steps it deems most appropriate to ensure that all counties have available sufficient information to utilize the provisions of SSB 5562, and
- b) Coordinate a discussion among the various components of the state's mental health system on how key information, particularly statutory changes affecting mental health, can best be communicated and disseminated throughout the mental health system, and other systems as appropriate (e.g., the criminal justice system).

AGENCY RESPONSE

The Department of Social and Health Services concurs with the recommendation. Their written response is attached as Appendix 2.

ACKNOWLEDGEMENTS

We appreciate the assistance provided by many individuals in conducting this study, in particular, staff of the Department of

Social and Health Services' Mental Health Division, and the County Designated Mental Health Professional supervisors throughout the state who responded to our survey.

Thomas M. Sykes
Legislative Auditor

On December 1, 1999, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

Senator Georgia Gardner
Chair

ENDNOTES

¹ JLARC is mandated to conduct a study of the impact of 2SSB 6214, the preliminary report of which is due September 1, 2000. That study will examine, at least indirectly, the impact of this later amendment.

² An exception is that a "developmental disabilities professional" is authorized to file such a petition if the person in question is developmentally disabled.

³ With the duration of LRA commitments ranging from 90 to 180 days, the total number recorded annually could range from 1,700 to 3,500.

⁴ The counties reporting an increase were Benton/Franklin, Grays Harbor, Kitsap, Kittitas, Pierce, and Spokane.

⁵ Pierce County staff attributed the increase, the bulk of which was recorded in 1999, to the passage of 2SSB 6214 in 1998.

⁶ Staff in Spokane County reported that although they had historically been very active in this area, their number of LRA commitments and extensions had dropped significantly over the past few months due to funding reductions and a change in service providers.

⁷ All initial involuntary commitments are made through an Evaluation and Treatment Facility, which can either be a state hospital or a private facility certified by the state. Many smaller counties do not have such facilities located within their borders.

APPENDIX 1 - SCOPE AND OBJECTIVES

INVOLUNTARY COMMITMENT OF MENTALLY ILL PERSONS:

Study of the Impact of SSB 5562 (Chapter 112, Laws of 1997)

SCOPE

This study will entail a limited review of the general impact of SSB 5562, pertaining to the involuntary commitment of mentally ill persons. Specifically, the focus will be on assessing the impact of the Act on the continuation of less restrictive alternative commitments under Chapter 71.05 RCW.

OBJECTIVES

1. Determine if the provisions of the Act have contributed to an increase in the number of petitions filed and granted to extend less restrictive alternative commitments.
2. Determine if the Act is perceived as having had an impact in terms of either reducing inpatient hospitalizations or criminal behavior.
3. Identify any major problem areas related to implementation of the Act.

APPENDIX 2 – AGENCY RESPONSE

- Department of Social and Health Services



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia WA 98504-5000

November 29, 1999

Thomas M. Sykes
Legislative Auditor
Joint Legislative Audit and Review Committee
501 16th Avenue Southwest
Olympia, Washington 98504

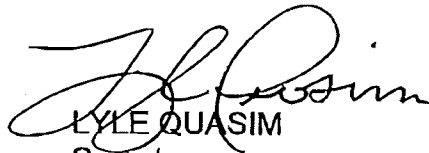
Dear Mr. Sykes:

Thank you for the opportunity to respond to the Joint Legislative Audit and Review Committee (JLARC) preliminary report "Impact of SSB 5562, Pertaining to the Involuntary Commitment of Mentally Ill Persons."

We have reviewed the report and concur with the recommendation that the Department of Social and Health Services take the lead to ensure that information on this legislation (SSB 5562) and other legislation related to changes in the mental health system be communicated to all necessary components of the mental health system. Pat Terry, Acting Director, Mental Health Division, will be in attendance at the December 1, 1999 meeting and will be available to provide brief comments or respond to members questions.

We appreciate the manner in which JLARC staff worked with Mental Health Division staff during this study and look forward to the December 1 meeting.

Sincerely,


LYLE QUASIM
Secretary

cc: Pat Terry, Ph.D.

