

# SENATE BILL REPORT

## 2SSB 6214

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As Passed Senate, February 14, 1998

**Title:** An act relating to mental illness.

**Brief Description:** Revising provisions relating to commitment of mentally ill persons.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Long, Hargrove, McDonald, Deccio, Franklin, Stevens, Strannigan, Wood, Schow, Swecker, Hale, Sellar, Thibaudeau, Haugen, Winsley and Oke).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/20/98, 2/4/98 [DPS-WM].

Ways & Means: 2/10/98 [DP2S].

Passed Senate, 2/14/98, 48-0.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6214 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Schow and Stevens.

**Staff:** Richard Rodger (786-7461)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 6214 be substituted therefor, and the second substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Brown, Fraser, Hochstatter, Long, Loveland, McDonald, Roach, Rossi, Schow, B. Sheldon, Snyder, Spanel, Swecker, Thibaudeau and Winsley.

**Staff:** Bryon Moore (786-7726)

**Background:** During the 1997 legislative interim, a King County Task Force on Mentally Ill Offenders was created to address issues related to the mentally ill misdemeanor offenders. The task force made recommendations concerning both internal process changes and statutory changes. The changes to the statutes included recommendations concerning focusing the process on public safety, increasing the sharing of information, and ensuring additional opportunities for treatment of mentally ill offenders.

## **Summary of Bill:**

### **CIVIL COMMITMENT (RCW 71.05):**

The definition for likelihood of serious harm– is expanded to include situations where an individual, who has a history of violent acts, makes threats to the physical safety of another. In determining the use of likelihood of serious harm, the use of history of violent acts is restricted to ten years, with exclusion for periods of confinement. Definitions of county designated mental health professional (CDMHP),– history of violent acts,– and violent act– are added.

The court must focus on whether the person poses a danger to public safety or security rather than whether his or her action constituted a felony offense. A person’s right to refuse medications is limited to the refusal of psychiatric medications at specified proceedings, other prescribed medication may not be refused.

The court, when making a determination of whether a person poses a likelihood of serious harm, must give great weight– to the following evidence: (1) a recent history of violence; or (2) a recent history of one or more prior civil commitment orders, entered because the person posed a likelihood of serious harm.– A prior commitment or violent act may not be the sole basis for a determination of likelihood of serious harm. Recent– is defined to mean three years.

A CDMHP must conduct, within 48 hours, a civil commitment evaluation of any nonfelon who is not in custody and is referred pursuant to the criminal competency statutes. If the CDMHP does not believe the individual should be detained, the decision must be reviewed by the court on the next judicial day. An evaluation and treatment facility must conduct a civil commitment evaluation of any nonfelon who is in custody and is referred pursuant to RCW 10.77. If the facility does not believe the individual should be detained, the decision must be reviewed by the court on the next judicial day. The professional person conducting the evaluation and the prosecuting attorney or the Attorney General, as appropriate, may stipulate to waive the court hearing. The individual’s rights are specified.

The CDMHP or professional person conducting an evaluation for civil commitment must consider: prior recommendations for civil commitment made pursuant to RCW 10.77; the person’s history of violent acts; prior determinations of incompetency or insanity; and prior civil commitments.

A person who is on a conditional release has his or her condition reviewed on the basis of whether there has been a substantial decompensation and whether there is a reasonable probability that the condition can be reversed by inpatient treatment. Conditionally released persons must be returned to inpatient treatment if: (1) they fail to adhere to treatment, or their condition decompensates; and (2) they present a likelihood of serious harm.

A patient’s consent is not necessary in order for a professional to communicate with, or provide records to, professional staff at a state or local correctional facility where the patient is now confined. The court must enter findings when it disagrees with a professional person’s recommendation on civil commitment. The findings must include whether the state met its burden of proof.

The Department of Social and Health Services (DSHS) must develop statewide protocols for use by CDMHPs. The protocols must be developed by September 1, 1999 and updated at least every three years.

#### CRIMINAL COMPETENCY (RCW 10.77):

This focuses on whether the person poses a danger to public safety or security rather than whether his or her action constituted a felony offense. Definitions of expert or professional person, CDMHP, history of violent act, and violent act are provided. Violent act means behavior that resulted in, or if completed would have resulted in, homicide, nonfatal injuries, or substantial damage to property.

When a person has been held for mental health treatment for the statutory maximum possible period of confinement allowable under Chapter 10.77 RCW, he or she must be referred to a CDMHP. Timelines are added for notice and transfer of records.

Deferral of bail is authorized pending evaluations for sanity or competency and standards are provided for setting bail. The department's authority to contract out sanity or competency evaluations is clarified.

Orders committing a defendant for a sanity or competency evaluation must be transmitted to the CDMHP located in the county where the defendant was charged.

Defendants who have been committed for sanity or competency evaluations must be referred for civil commitment evaluations if: (1) they are charged with a felony; or (2) they are charged with a nonfelony crime and (i) are charged with, or have, a history of one or more violent acts; (ii) pose a threat to public safety; (iii) have been previously acquitted by reason of insanity; or (iv) have been previously found incompetent under Chapter 10.77 RCW. If a civil commitment evaluation is recommended, under this section, the court must order the civil commitment evaluation to be conducted prior to the defendant's release. Timelines are added for conducting a civil commitment evaluation of incompetent defendants. Information sharing is mandated between courts, CDMHPs and prosecutors.

Current law in regards to felony offenders is retained, except when the court finds a felon incompetent, he or she must be committed to DSHS for evaluation and treatment.

Nonfelony defendants who are determined to be incompetent and who: (1) have a history of one or more violent acts or a pending charge involving one or more violent acts; (2) have been acquitted by reason of insanity; or (3) have been previously found incompetent regarding a offense which caused harm to another, must be placed in a facility designated by DSHS for up to 14 days and/or up to 90 days on conditional release for mental health treatment and competency restoration. If competency is restored, the defendant is returned to the original court for trial. If competency is not restored, the criminal charges are dismissed and the person is referred to a CDMHP or evaluation and treatment facility for evaluation of a commitment under RCW 71.05. The court may refer any other nonfelony defendant to a CDMHP for evaluation. The CDMHP must provide notice of evaluation results to specified persons.

Conditionally released persons under RCW 10.77 must be apprehended and returned to treatment if they present a threat to public safety.

Relevant records and reports, as defined by DSHS, must be made available to law enforcement. Relevant records and reports, as defined by DSHS, must accompany a defendant who is transferred to a mental health facility or correctional facility.

#### MISCELLANEOUS PROVISIONS:

Outpatient mental health treatment providers must be notified of their patient's release from a state correctional facility. Records and reports must be made available to the treatment provider upon request. This section only applies to persons committed to a correctional facility after the effective date of this section, who received treatment within two years prior to their confinement. The local regional support network is notified if the treatment provider cannot be located.

A defendant's criminal history must identify acquittals by reason of insanity and dismissals due to lack of competency.

The Washington State Institute for Public Policy (WSIPP) must conduct an evaluation of this act.

**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 1998.

**Effective Date:** The bill takes effect on July 1, 1998, except Sections 18, 34, 37 and 39 which take effect March 1, 1999.

**Testimony For:** This bill is necessary to protect the public from a narrow class of misdemeanor offenders who suffer from a mental illness and have a history of committing violent acts or offenses, prior findings of incompetency or insanity. The bill will provide necessary treatment and supervision for these offenders and ensure that these offenders are examined by the necessary mental health professionals, and further that the decision to release an offender to the community is reviewed by a court. The bill will allow the professional access to better information and easier access to medical records as needed to make proper decisions affecting public safety. The bill provides a seamless system of care between two previously separate systems.

**Testimony Against:** This bill is not necessary because the current law is adequate to address the issues raised by the recent events in Seattle. This bill mixes the civil commitment laws and the criminal justice laws and deny due process to mentally ill people and raises constitutional issues. The mentally ill should not be denied their right to remain silent. The provisions requiring the return of conditionally released persons back into a secure facility is too broad and doesn't work well with the current mental health system. We should not be directing the court to give "weight" to evidence or require them to enter findings. This bill should not deal with a person's right to refuse medications.

**Testified:** Norm Maleng, King County Prosecuting Attorney (pro); Bob Boruchowitz, Defender Association (con); William Arenmeyer, Washington Association of Citizens with Chronic Mood Disorder (con); Ted Inkley, Seattle City Attorney's office (pro); Ted Wilson, DOC; Jean Wessman, Washington State Association of Counties (pro); David E. Stewart Pierce County RSN/PHP (con); Doug Levy, city of Everett (pro); Sue and Don Plucker, family of San Stevenson (pro); Jann Hoppler, DSHS (pro); Richard Warner, Steven Pearce, CCHR (con); Tim Keller, Washington State Psychiatric Association (pro); Martha Harden, Superior Court Judges Association (pro); Barbara Gletne, King County.

**House Amendment(s):** The definition of antipsychotic medications– is clarified. DSHS is required to develop protocols for use by CDMHPs for chapters 71.05 and 10.77 RCW.

The definition of violent acts– is modified to include reckless behavior that creates an immediate risk of serious physical harm to another person.

An account is created to fund the use of atypical antipsychotic medications by the regional support networks (RSNs). A budget note is included directing \$210,000 be provided for this account.

The Department of Corrections is directed to conduct a study on the efficacy of the RSNs in implementing the act. The Joint Legislative Audit and Review Committee must conduct an evaluation of the efficiency and effectiveness of the act. The final report is due January 1, 2001 and the act sunsets June 30, 2001.

A null and void clause is included.