

HOUSE BILL REPORT

ESSB 6487

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to information concerning mental health services provided to offenders.

Brief Description: Providing for the release of mental health information under certain circumstances.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Long, Hargrove, Sheahan and Winsley; by request of Department of Social and Health Services and Department of Corrections).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/23/00, 2/25/00 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Requires mental health providers to release records and reports to the Department of Corrections (DOC) regarding offenders sentenced under the Sentencing Reform Act (SRA).
- Authorizes only certain employees within the DOC to obtain the mental health records of offenders for purposes of preparing pre-sentence reports, providing supervision of the person, and determining the person's risk to the community.
- Requires that all mental health information received by the DOC to remain confidential except under certain circumstances.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Yvonne Walker (786-7841).

Background:

Pre-Sentence Reports. Before imposing a sentence upon an offender a court usually conducts a pre-sentence hearing. At that time, the court may order the DOC to complete a pre-sentence report to assist the trial court in sentencing the offender after he or she has been convicted. A pre-sentence report usually includes an offender's prior convictions, prior arrests, employment history, education history, and family and social background.

Release Plans. Prior to an offender's release from confinement, a release plan may be developed for the purpose of determining the offender's risk to the community and to plan for any needed treatment and support services that may be needed during his or her transition back into the community.

Mental health providers usually do not provide records or reports to the DOC on a regular basis for pre-sentencing or post sentencing purposes, regarding mental health services provided to an offender while voluntarily or involuntarily under their care.

Summary of Amended Bill:

Mental health providers are permitted to share mental health records and reports with those DOC employees for whom the information is necessary to their employment duties.

Pre-Sentence Reports and Release Plans. Upon the DOC request, information relating to mental health services delivered to a person sentenced or being sentenced under the SRA, must be released to the DOC personnel. Records may only be released to the DOC employees for the sole purpose of carrying out the responsibilities of their office. The information must be used for the purposes of completing a pre-sentence investigation, for the supervision of an incarcerated person, or for determining the person's risk to the community upon his or her release. The request must be in writing and does not require the consent of the offender subject of the record.

The Department of Social and Health Services (DSHS) and the DOC, in consultation with regional support networks, mental health service providers, mental health consumers, and advocates for persons with mental illness, must adopt rules regarding

the release of such records including the type and scope of information to be released. In addition, these rules must both facilitate the DOC's ability to carry out its responsibility of planning and ensuring community protection, and establish requirements for the notification of all persons under the supervision of the DOC.

All information received by the DOC must remain confidential and can only be used for the purpose of providing evidence or a report to the court, for planning for the supervision of an offender, or for assessment of an offender's risk to the community.

Any information received by the DOC may be released to the Indeterminate Sentencing Review Board (ISRB). Further disclosure by the ISRB must be consistent with any written policy of the board. In addition, the DOC may also share any mental health information received with other state or local agencies for the purposes of completing a pre-sentence investigation, supervision of a person, or for determining an offender's risk to the community. All records that are disclosed must be in a manner that is consistent with written policy to be developed by the DOC.

No mental health service provider or employee may be held liable for any mental health information released or used by the DOC. Information received by the DOC regarding high risk offenders may only be disclosed by the department to individuals only as necessary for them to take reasonable steps for the purpose of self protection. The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, or reporting of the offender's behavior to the department. The DOC may not disclose or release to the public copies of any treatment documents or records.

In sentencing hearings or any other hearings in which the DOC presents mental health information, the court may close those portions of the hearing that include disclosure of mental health information to the public, seal those portions of the record, or grant other relief to prevent the inappropriate disclosure of mental health information to the public.

Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient, the release of such information may be restricted as necessary to comply with federal law and regulations.

Amended Bill Compared to Engrossed Substitute Bill: It is clarified that the disclosure of the mental health information provided to the court by the DOC must be limited as provided in the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The DOC has an obligation to provide the most complete and comprehensive information as they can to the judges, for purposes of preparing pre-sentence reports and determining sentence conditions for an offender. This bill will allow the DOC to obtain that information to be used for the supervision of the offender while in custody and also after the offender has been released back into the community. This legislation strikes a good balance between confidentiality and public notification.

Testimony Against: This bill infringes upon mental health confidentiality rights. The need for the DOC to obtain the mental health information is understood and it will assist them in proper risk assessment; however, the bill as written provides no real protections for confidentiality. The ability to release information ultimately is left to the DOC's discretion. Several changes to the bill are suggested that include the following:

- confidentiality rights should be protected by changing the sections dealing with public disclosure of the information from "may be limited" to "shall be limited";
- one section of the bill limits the department's liability for release of the mental health information to acts with "gross negligence." The department should not be allowed to be negligent with any of this highly confidential information;
- it is important that the DOC guidelines for release of confidential information be clearly stated in statute, not by the DOC written policies which can be amended without legislative oversight; and
- there should be clear statutory language defining "relevant records."

Testified: (In support) Pat Terry, Department of Social and Health Services; and Cathy Stout, Department of Social and Health Services.

(Opposed) Sherry Appleton, Washington Defender Association.