

SENATE BILL REPORT

SHB 1300

As of April 3, 2009

Title: An act relating to access to information on mental health services received by persons who have been committed for custody or supervision or who have been civilly committed after being found incompetent to stand trial for a felony.

Brief Description: Accessing mental health information.

Sponsors: House Committee on Human Services (originally sponsored by Representatives Hurst, Dickerson, Pearson, Klippert, O'Brien and Smith).

Brief History: Passed House: 3/09/09, 97-0.

Committee Activity: Human Services & Corrections: 3/24/09, 3/26/09 [DPA].

Ways & Means: 4/03/09.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Brandland, Carrell, Kauffman and McAuliffe.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Tim Yowell (786-7435)

Background: As a general rule, a facility which provides mental health treatment services to an individual may not disclose the fact of admission or any information or records relating to the individual without a signed release, unless an exception is applicable.

State law contains exceptions to the confidentiality rule which allow mental health treatment information to be shared with law enforcement officers, public health officers, and staff of the Department of Corrections (DOC) and the Indeterminate Sentence Review Board (ISRB). These exceptions are contained in three different sections of chapter 71.05 RCW. In each section of the law, disclosure of information is subject to restrictions on the use of the information and the type of information which is available. These restrictions are sometimes inconsistent. Information generally may only be obtained without consent in relation to

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someone who is an offender and for the purposes of supervision, risk assessment, or presentence investigation, and during certain emergency situations.

A work group was formed in 2008 to examine safety issues related to the supervision of offenders with mental illnesses, in response to the slaying of Shannon Harps in Seattle on December 31, 2007. The work group found that communication across systems is a significant problem for professionals who deal with offenders with mentally illness. Many professionals are prohibited from communicating with each other due to confidentiality laws. In other instances, when communication would be legally permitted, information is not shared because there is a perception of a prohibition of sharing information. The complexity of confidentiality rules, and the manner in which they are dispersed throughout the code, makes determination of what kinds of records and information may be shared laborious and complicated.

Summary of Bill (Recommended Amendments): Exceptions to the confidentiality of mental health treatment information which apply to requests by law enforcement, DOC personnel, and the ISRB are consolidated in a new section of 71.05 RCW. These exceptions are expanded in the scope of who may request and receive such information, and which offenders are subject to having their information shared without their permission.

Information may be shared about an offender who is currently under the supervision of DOC or the ISRB, or who has been previously convicted, found not guilty by reason of insanity, or incompetent to stand trial for a serious violent offense.

Information may be shared with law enforcement officers, personnel from DOC, the ISRB, a city or county jail, public health officers, designated mental health professionals, or therapeutic court personnel. These persons may be told the fact, place, and date of an involuntary commitment; the fact and date of discharge; and last known address of the person. Additional information about mental health treatment may be obtained when the requestor has reasonable suspicion that the person has engaged in an activity which constitutes a crime or violation of community custody or parole, or is exhibiting signs of mental deterioration which may make the person appropriate for civil commitment. All requests for information must be in writing, except that DOC or law enforcement may make an oral request in an emergency situation which must be subsequently confirmed in writing. Information must be requested for the purpose of a presentence investigation, risk assessment, planning or providing supervision to an offender, or responding to an offender's failure to report for supervision.

The Department of Social and Health Services is instructed to develop a standard form for requests of information and a standard format for providing information which limits the information disclosed to the minimum necessary to serve the purpose for which the information is requested.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): A person may not request mental health treatment information beyond fact, place, and date of involuntary commitment; fact and date of discharge; and last known address unless the requestor has reasonable suspicion that the person has engaged in an activity which constitutes a crime or a violation of community

custody or parole, or is exhibiting signs of mental deterioration and may be appropriate for civil commitment.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Substitute House Bill (Human Services & Corrections): PRO: The work group that examined this issue did great work. This bill is not very expensive, but will have a great impact on public safety. The ability to share information can save the lives and health of potential victims. Sharing information can also help the offender, who without intervention may become incarcerated for the rest of that offender's life or come to harm. Because of this, this is a prevention bill, and should save money. This is a tough area, because individual rights can be in conflict with safety concerns, but disparate groups have been able to come together, including civil rights groups, and changes have been made to resolve concerns. What is left is narrowly tailored to protect the community and the individual at the same time.

Persons Testifying (Human Services & Corrections): PRO: Representative Hurst, prime sponsor; Ethan Rogers, King County Prosecutor's Office.

Staff Summary of Public Testimony on HSC Recommended Amended Bill (Ways & Means): PRO: Lack of good communication and information about their condition is one of the most significant reasons that people with serious mental illness run into trouble with the law. Information about their condition is needed before bad decisions are made about how to respond to their behavior, and bad things happen. The proposed legislation enacts some of the key recommendations from the task force that investigated the circumstances that led to a tragic slaying by a mentally ill offender on community supervision. The task force found that misunderstandings about what kind of information can be released to whom, and excessive restrictions on such releases, can contribute to such tragedies.

Persons Testifying (Ways & Means): PRO: Representative Hurst, prime sponsor; Jim Adams, National Alliance for the Mentally Ill, Washington.