

# SENATE BILL REPORT

## SB 6549

---

---

As of January 18, 2010

**Title:** An act relating to the establishment of the psychiatric security review board to supervise persons acquitted by reason of insanity.

**Brief Description:** Providing for the establishment of the psychiatric security review board to supervise persons acquitted by reason of insanity.

**Sponsors:** Senators Hargrove, Carrell and Roach.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/15/10.

---

### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Kevin Black (786-7747)

**Background:** A defendant who is found not guilty by reason of insanity (NGRI) may be committed for treatment at one of Washington's two state hospitals, if the judge or jury finds that the defendant presents a substantial danger to other persons, or a substantial danger of committing criminal acts jeopardizing public safety or security. The term of commitment may not exceed the maximum sentence for the offense for which the defendant was acquitted by reason of insanity.

There are currently 186 persons found NGRI confined in the state hospitals: 117 at Western State Hospital and 69 at Eastern State Hospital. Approximately 27 percent of these individuals were found NGRI for a homicide offense, 34 percent for a combination of offenses including some degree of assault, and the remainder for other offenses. According to the Division of Behavioral Health and Recovery (DBHR), an average of 20 new defendants are found NGRI each year. Data from DBHR indicates that an average of 16 to 24 persons found NGRI per year are granted a conditional release or final release from custody.

A person found NGRI may not be released from custody before the expiration of the person's term of commitment without leave of the superior court in the county in which the person was committed. A person found NGRI may petition for conditional release or final release once every six months. The Department of Social and Health Services (DSHS) must submit this release petition to the court with its recommendation. The court must determine whether

---

*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.*

the patient may be released conditionally without: (1) substantial danger to other persons, or (2) substantial likelihood of committing criminal acts jeopardizing public safety or security. The court may only reject the recommendation of DSHS based on substantial evidence.

A person found NGRI who is granted conditional release is monitored after leaving the hospital by state hospital staff, who may enlist the cooperation of community corrections officers, case managers, or other treatment personnel. Any person who alleges that a person found NGRI is failing to abide by conditions of release, or is in need of care and treatment, may cause the person to be apprehended, causing a revocation hearing to be scheduled by the court.

In October 2009, the Secretary of DSHS convened a State Hospital Safety Review Panel, in part to provide recommendations on how to assure community safety while providing therapeutic interventions and community integration for state hospital patients. One of the recommendations of the panel was to establish a Psychiatric Security Review Board (PSRB) according to the Oregon model.

The state of Oregon established a PSRB in 1978 to provide independent management of Oregon's NGRI population. The PSRB assumes the functions of the court in Washington, and also provides close monitoring to persons for whom the PSRB has granted conditional release. The PSRB in Oregon has won acclaim for its effectiveness and has been the subject of numerous articles in academic journals.

**Summary of Bill:** A PSRB is established in Washington to provide for the supervision of persons found NGRI. The PSRB consists of five members appointed by the Governor with the consent of the Senate. These members cannot include a prosecutor or public defender, and must include a psychiatrist, a psychologist, a person with supervision experience, an attorney, and a member of the public.

The PSRB must hear the case of a person found NGRI within 90 days of the initial commitment, and then once every two years while the person remains in custody, or every five years if the person is on conditional release. The person may request a hearing once every six months to request conditional release or final release. The state, which may be represented by the Attorney General or the prosecutor of the county where the person was committed, must bear the burden of proof respecting the commitment once every two years, while the person found NGRI must bear the burden of proof at every other hearing. The standard for release is unchanged from current law. The person found NGRI may appeal a decision by the PSRB to the Court of Appeals.

A release hearing may be initiated by DSHS. The PSRB, or an attorney representing the state, may obtain an independent evaluation at any time. In any PSRB hearing, a person with a mental disorder which is in a state of remission is considered to have a mental disorder requiring supervision when the disorder may, with reasonable medical probability, become active and render the person a danger to others.

When a person found NGRI is in conditional release, monthly reports must be submitted to the PSRB. The chairperson of the PSRB, or any of its members, may issue an order causing the conditionally released person to be taken into custody at any time when it appears that

conditions of release have been violated or the mental health of the person has changed, with a hearing following within 20 days.

DSHS is responsible for developing appropriate conditional release plans for persons found NGRI, and must pursue any amendments to the Medicaid state plan necessary to ensure the maximum federal financial participation in supervision and treatment.

The PSRB must receive notice of proposals for furloughs or grounds privileges, or escapes respecting persons under its jurisdiction.

In determining whether a person should be committed to a state hospital or conditionally released, the PSRB must have as its primary concern the protection of society.

**Appropriation:** None.

**Fiscal Note:** Requested on January 7, 2010.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: The focus on community safety is an important element of this bill. We prefer PSRB decision making to court decision making for the reason of statewide consistency, and because of the expertise the PSRB would bring to the process. It is important to consider liability. The promise for improvements in community supervision is very attractive. Psychiatric Advanced Registered Nurse Practitioners should have representation on the review board.

CON: The current system already places a high value on public safety, provides specialized supervision, and has a very low recidivism rate. Judges, not political appointees, should make decisions about release. Keep politics out of this process. There should not be paper hearings without live witnesses. Please look for more narrow solutions for the problems in our system, rather than this radical change. Experience in Oregon shows the PSRB does not let persons out until long after they are ready, and then only to locked facilities. There are not enough community placements available. We believe this bill will sacrifice due process in favor of preventive detention.

OTHER: The PSRB in Oregon has become a national model because it is both safe and cost effective. The multidisciplinary nature of the board is a great asset. The first mission of the PSRB is to protect community safety. The PSRB tries to balance the rights of the persons with the need for public safety, but does not ignore the input of victims and other stakeholders. It has developed a network of community mental health providers who provide input into the supervision process. The PSRB has constant daily communication with case managers for persons who have been conditionally released. The PSRB intervenes early when release conditions are violated, without waiting for an untoward event. The recidivism rate for persons released by the PSRB is 2.2 percent, with a revocation rate of less than 1 percent per month. The cost of monitoring persons on conditional release is substantially less than the cost of inpatient treatment. PSRB clients are treated outside of Oregon's

capitated mental health plan on a fee for service basis, with a Medicaid match. Oregon devotes more resources to community treatment for persons found NGRI than Washington. The focus on public safety, community release planning, and ability to immediately revoke conditional release already exists in Washington, and there is no need to radically overhaul our statutes when there is the opportunity for targeted reform.

**Persons Testifying:** PRO: Tom McBride, Washington Association of Prosecuting Attorneys; Leslie Emerick, Association of Advanced Practice Psychiatric Nurses.

CON: Daron Morris, Washington Association of Criminal Defense Lawyers; David Lord, Disability Rights Washington; Shankar Narayan, ACLU.

OTHER: Mary Claire Buckley, Oregon Psychiatric Security Review Board; Kari Burrell, Office of the Governor.