

HOUSE BILL REPORT

SSB 5452

As Passed House - Amended:
April 7, 2011

Title: An act relating to improving communication, collaboration, and expedited medicaid attainment with regard to persons diverted, arrested, confined or to be released from confinement or commitment who have mental health or chemical dependency disorders.

Brief Description: Regarding communication, collaboration, and expedited medicaid attainment concerning persons with mental health or chemical dependency disorders who are confined in a state institution.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens and Haugen).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 3/16/11, 3/22/11 [DPA].

Floor Activity:

Passed House - Amended: 4/7/11, 92-0.

**Brief Summary of Substitute Bill
(As Amended by House)**

- Permits disclosure of the fact, date, and place of an involuntary commitment or release from commitment to a correctional institution for use with the Post Institutional Medical Assistance system.
- Requires notification of law enforcement when a person with a mental disorder is released from evaluation for commitment if the officer requests notification and provides contact information.
- Requires that the Department of Social and Health Services notify police and sheriffs in certain jurisdictions when a person committed due to criminal insanity or incompetence escapes or is released.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

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.

Majority Report: Do pass as amended. Signed by 11 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

Staff: Alexa Silver (786-7190).

Background:

Post Institutional Medical Assistance System. A person is not eligible to receive Medical Assistance, including Medicaid and Supplemental Security Income, while confined in a correctional facility. The Department of Social and Health Services (DSHS) is required to adopt policies and rules to ensure that Medical Assistance coverage be fully reinstated on the date of release from confinement of a person with a mental disorder who was enrolled in Medical Assistance immediately prior to confinement. To meet this goal, the DSHS must establish procedures for coordinating the DSHS field offices, institutions for mental disease, and correctional institutions. The Post Institutional Medical Assistance (PIMA) system is an Internet-based tool that facilitates ending and reinstating Medical Assistance benefits when a person enters or leaves an institution. The tool allows correctional facilities and other institutions to indicate when a person is admitted into or released from a facility. In addition, it indicates whether the person has received Medical Assistance in the past.

Evaluation for Commitment for a Mental Disorder. When a police officer has reasonable cause to believe a person with a mental disorder has committed a non-felony, non-serious offense, the officer may: take the person to a crisis stabilization unit, where the person may be held up to 12 hours; refer the person to a mental health professional for evaluation for involuntary commitment; or release the person upon agreement to participate in treatment.

A designated mental health professional may file a petition for 72-hour detention of a person who, because of a mental disorder, presents a likelihood of serious harm or is gravely disabled. If the person is not approved for admission but has been arrested, the evaluation and treatment facility may detain the person for up to eight hours at the request of a peace officer so the officer can take the person into custody. A designated mental health professional may also have a person taken into custody for 72-hour evaluation and treatment if the person presents an *imminent* likelihood of serious harm or is in *imminent* danger because of being gravely disabled. Under these circumstances, a peace officer may also deliver the person to an evaluation and treatment facility, a crisis stabilization unit, or an emergency room, where the person may be held for up to 12 hours.

Commitment Due to Incompetency. A person is incompetent to stand trial if, as a result of a mental disease or defect, the person lacks the capacity to understand the nature of the proceedings or assist in the defense. A person incompetent to stand trial may be civilly committed. If the person escapes from custody, the DSHS must immediately notify the chief of police and sheriff in the city and county where the person resided before arrest. If the person is due to be released from custody, the DSHS must send advance written notice to the chief of police and sheriff in the jurisdiction where the person will reside if the person committed a sex, violent, or felony harassment offense and presents a substantial likelihood

of repeating similar acts. If requested, the notice must also be sent to victims, witnesses, and any person specified by the prosecutor.

Commitment Due to Criminal Insanity. If a defendant is found not guilty by reason of insanity, the court must order hospitalization or treatment in a less restrictive alternative if the person is a substantial danger to others or presents a substantial likelihood of committing criminal acts that would jeopardize public safety unless kept under further control. If the person escapes, the DSHS must notify law enforcement in the city or county where the person escaped, as well as other appropriate government agencies and the person's relatives.

Federal Law on Privacy of Health Care Information. The federal Health Insurance Portability and Accountability Act (HIPAA) prohibits disclosure of protected health information without a patient's authorization unless an exception applies, including the following:

- to law enforcement if required by law, including a statute that compels the entity to disclose protected health information;
- to law enforcement for the purpose of locating a suspect, if limited to specified information, including date and time of treatment;
- to law enforcement if necessary to identify or apprehend a person who has escaped from a correctional institution or from custody;
- to a correctional institution or law enforcement official with custody over a person if necessary for the provision of health care;
- to a health oversight agency for oversight activities authorized by law; and
- to another agency that administers a public benefits program if the information relates to eligibility and the disclosure is authorized by statute or regulation.

Summary of Amended Bill:

Post Institutional Medical Assistance System. In the course of using the PIMA system to support expedited Medical Assistance determinations and suspensions, a correctional institution may be provided with the fact, place, and date of an involuntary commitment, discharge, or release without the person's consent. This disclosure is mandatory for purposes of HIPAA.

Evaluation for Commitment for a Mental Disorder. If a person who has a mental disorder is not approved for admission or is released from a facility where the person is being evaluated for involuntary treatment, and a peace officer has requested notification and provided contact information, the mental health provider must inform the officer within a reasonable period of time. This notification requirement applies under the following circumstances:

- the person committed a non-felony, non-serious crime, and the officer delivered the person to a crisis stabilization unit;
- the person has been arrested, but is not approved for admission to an evaluation and treatment facility; and
- the officer delivered the person to a crisis stabilization unit, an evaluation and treatment facility, or an emergency room because the person presented an imminent likelihood of serious harm or was in imminent danger because of being gravely disabled.

Release or Escape of Person Committed for Incompetence. If a person committed for incompetence is due to be released from custody, and the person committed a sex, violent, or felony harassment offense and presents a substantial likelihood of repeating similar acts, the DSHS must send written notice 30 days in advance to the chief of police and sheriff that had jurisdiction over the person on the date of the offense, if notice is requested. If such a person escapes, the DSHS must immediately notify the chief of police and sheriff in the jurisdiction where the person escaped.

Escape of Person Committed for Insanity. If a committed criminally insane person escapes from a state facility or disappears while on an authorized absence or conditional release, the DSHS must notify law enforcement in the city and county that had jurisdiction over the person on the date of the offense.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will improve communications regarding people who are mentally ill and who come into contact with the criminal justice system. More collaboration is necessary as this population is released from institutions. The DSHS has been working diligently since House Bill 1290 was passed in 2005 to develop the PIMA tool. There has previously been discussion of including the date and fact of involuntary commitment, and this bill clarifies that there is a HIPAA exception for sharing this information. The amendment regarding chemical dependency complies with federal law. The provisions regarding escape come from Pierce County, where the sheriff only learned that a person found not guilty by reason of insanity had escaped when the victim called the sheriff.

(Opposed) None.

Persons Testifying: Jo Arlow, Washington Association of Sheriffs and Police Chiefs; and David Dickinsen, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.