

# SENATE BILL REPORT

## ESSB 6010

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As Passed Senate, February 13, 2012

**Title:** An act relating to state hospitals.

**Brief Description:** Addressing safety issues at state hospitals.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Carrell, Roach, Becker, Conway, Schoesler, Regala, Delvin, Stevens and Shin).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/19/12, 2/02/12 [DPS].

Passed Senate: 2/13/12, 48-1.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6010 be substituted therefor, and the substitute bill do pass.

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

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

**Background:** Western State Hospital and Eastern State Hospital are state institutions which provide inpatient mental health treatment to persons committed under the Involuntary Treatment Act, persons committed as criminally insane, and persons committed for evaluation or treatment related to competency to stand trial. A news report in June 2011 reported that workers at psychiatric hospitals are assaulted on the job more than any other work place in Washington, 60 times more than the average worker in the state.

A person is guilty of the crime of custodial assault if the person assaults a full or part-time staff member or volunteer, educational personnel, personal service provider, vendor or agent working at a juvenile detention facility, adult corrections institution or adult detention facility, or community corrections office. Custodial assault is a class C felony.

A person who assaults a nurse, physician, or certified health care provider who is performing nursing or health care duties at the time of the assault is guilty of assault in the third degree, a class C felony.

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*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.*

A person may be civilly committed for mental health treatment under the Involuntary Treatment Act if a court or designated mental health professional determines that, as a result of a mental disorder, the person presents a likelihood of serious harm or is gravely disabled. Likelihood of serious harm means that there is a substantial risk that the person will inflict physical harm on himself or herself, others, or the property of others. Gravely disabled means that the person is in danger of serious physical harm based on a failure to provide for essential needs of human safety, or manifests severe deterioration and is not receiving such care as is essential for health and safety.

A person may be committed to a state hospital as criminally insane if the person is found not guilty by reason of insanity and the court or jury determines that the person is a substantial danger to other persons unless kept under further control by the court, or that the person presents a substantial likelihood of committing criminal acts jeopardizing public safety or security.

Antipsychotic medication may be administered without consent to a person who has been committed for less than 180 days under the Involuntary Treatment Act if it is determined that failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interests of the person. Before administering antipsychotic medication, the facility must attempt to obtain the informed consent of the person and obtain an additional concurring medical opinion by a psychiatrist, psychiatric advanced registered nurse practitioner, or physician in consultation with a mental health professional with prescriptive authority.

Antipsychotic medication may be administered without consent to a person who has been committed for 180 days under the Involuntary Treatment Act pursuant to court order if the petitioner proves by clear, cogent, and convincing evidence that a compelling state interest justifies overriding the patient's lack of consent, the proposed treatment is necessary and effective, and medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective. Such a person is entitled to counsel and the protections of the rules of evidence. Antipsychotic medication may be administered without consent in an emergency, provided that a court petition is filed on the next judicial day. The court order for involuntary medication is effective until the expiration of the person's current 180-day order of commitment.

No specific provision in the code addresses procedures for the involuntary medication of a person committed to a state hospital as criminally insane.

**Summary of Engrossed Substitute Bill:** The crime of custodial assault is expanded to include an assault on a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any vendor or agent of a state hospital who was performing official duties at the time of the assault.

A jail may not refuse to book a patient of a state hospital based solely on the patient's status as a state hospital patient, but may consider other relevant factors which apply to the individual circumstances of the case.

A state hospital may administer antipsychotic medication without consent to a person committed as criminally insane by following the same procedures that apply to the involuntary medication of a person who has been involuntarily committed for 180 days under the Involuntary Treatment Act. The maximum period during which the court may authorize medication is 180 days or the time remaining in the person's order of commitment, whichever is shorter. The petition for involuntary medication may be filed in either the superior court that ordered the commitment of the person or the superior court of the county in which the individual is receiving treatment, provided that a copy of any order which is entered is forwarded to the superior court of the county that ordered the commitment, which shall retain exclusive jurisdiction over all hearings concerning the release of the patient.

The state has a compelling interest in providing antipsychotic medication to a patient who has been committed as criminally insane when refusal of antipsychotic medication would result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of the patient.

**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 Original Bill:** PRO: To deal effectively with assaults, the capacity of jails and costs for counties in which state hospitals are located must be considered. When charges are not filed for assault, there is no justice for state hospital employees. Police are reluctant to file reports when the jail refuses to book patients. Assault rates are abysmal at Western State Hospital. Having an expert report on competency is important because it speaks to reasons why charges do not go forward. The expansion of custodial assault gives the state hospital the same protections that apply to other institutions that deal with a similar population.

OTHER: We are supportive of most of this bill. Competency can change over time. We object to the language allowing billing between counties; this should be handled using the existing statutory scheme, which already has provisions regarding impacts of institutions on local counties.

**Persons Testifying:** PRO: Senator Carrell, prime sponsor; Matt Zuvich, WA Federation of State Employees.

OTHER: Tom McBride, WA Assn. of Prosecuting Attorneys.