

# HOUSE BILL REPORT

## HB 1599

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### As Amended by the Senate

**Title:** An act relating to secure facilities for the criminally insane.

**Brief Description:** Concerning secure facilities for the criminally insane.

**Sponsors:** Representatives Rodne, Jinkins and Wylie; by request of Department of Social and Health Services.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/3/15, 2/12/15 [DP];

Appropriations: 2/25/15, 2/26/15 [DP].

##### **Floor Activity:**

Passed House: 3/9/15, 96-2.

Senate Amended.

Passed Senate: 4/8/15, 49-0.

#### **Brief Summary of Bill**

- Removes the expiration on the authority granted to the Department of Social and Health Services to place a person in a secure Department of Corrections facility when that person is committed following an insanity acquittal and has been determined to present an unreasonable safety risk.

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#### **HOUSE COMMITTEE ON JUDICIARY**

**Majority Report:** Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

**Staff:** Omeara Harrington (786-7136).

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#### **HOUSE COMMITTEE ON APPROPRIATIONS**

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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.*

**Majority Report:** Do pass. Signed by 31 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

**Minority Report:** Do not pass. Signed by 2 members: Representatives G. Hunt and Taylor.

**Staff:** Andy Toulon (786-7178).

**Background:**

Commitment of Persons Found Not Guilty by Reason of Insanity.

A person is not guilty by reason of insanity (NGRI) if he or she, at the time of the act underlying the charge, was unable to perceive the nature and quality of the act or unable to tell right from wrong with respect to the particular act because of a mental disease or defect. A person found NGRI must be committed to the custody of the Department of Social and Health Services (DSHS) if the fact finder determines that the person is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court, other persons, or institutions.

The maximum term of commitment following an NGRI acquittal is equal to the maximum possible sentence for any offense that was charged against the person. Persons committed as NGRI undergo a mental condition evaluation at least once every six months, and may petition for conditional release or final release by making an application to the Secretary of the DSHS, or by making a direct petition to the court.

Transfer to Secure Facilities of Persons Committed NGRI.

If the DSHS determines in writing that a person committed to its custody as NGRI presents an unreasonable safety risk which, based on behavior, clinical history, and facility security is not manageable in a state hospital setting, the DSHS may place the person in any secure facility operated by the DSHS or the Department of Corrections (DOC). The person remains in the legal custody of the DSHS, and the person's placement must be reviewed at least every three months. A person placed in a secure facility is entitled to appropriate mental health treatment governed by a formalized treatment plan, and retains the right to examination of his or her mental condition every six months and the right to petition for conditional or final release.

The authority of the DSHS to place a person in a secure facility expires June 30, 2015.

**Summary of Bill:**

The expiration on the authority granted to the DSHS to place a person in a DOC facility when that person is committed following an insanity acquittal and has been determined to present an unreasonable safety risk is removed.

## **EFFECT OF SENATE AMENDMENT(S):**

Before the DSHS places a person who is committed as NGRI in a secure facility of the DOC, the Secretary of the DSHS must give consideration to reasonable alternatives that would be effective to manage the person's behavior, and must include written documentation of the decision and reasoning in the patient's medical file.

**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony (Judiciary):**

(In support) This bill removes a sunset on an authority that the DSHS already has. It is critical to retain this authority to ensure the safety of staff and patients. Not all patients should be together, collocated in the same facility. It makes sense to segregate those who are violent and dangerous from the rest of the population. This authority has only been used once since it went into law in 2010, and only applies in NGRI cases. The DSHS takes very seriously the ramifications of moving a person to a DOC facility. A person will only be moved after all other management steps have been taken, including changing the treatment plan, intervention of a psychiatric response team with de-escalation training, transfer to a different ward or different hospital, and one-to-one staff oversight. The transfer can only occur if the person receives appropriate treatment.

(Opposed) The reality is that this authority came into effect over one case, and this one person is the only person who has ever been moved pursuant to the authority. To remove NGRI committees to the DOC is mixing apples and oranges. Hospitals can handle these cases. There is proposed language in the budget to dedicate space for mentally ill violent offenders. Persons committed as NGRI are to be given adequate care and individualized treatment, which does not occur in the DOC. Committed persons are not supposed to be punished, but would be housed in a facility designed to house those who have been found guilty of a crime. People enter NGRI pleas because they are mentally ill. Prison is not a therapeutic setting.

### **Staff Summary of Public Testimony (Appropriations):**

(In support) The most important thing that needs to be considered is the safety of other patients and staff at the state hospitals. This bill provides authority that is seldom exercised.

(Opposed) Persons who are found not guilty by reason of insanity are entitled to treatment rather than being sent to prison which is not a therapeutic environment. Should the DSHS actually use this authority, there is a very strong likelihood of litigation.

**Persons Testifying (Judiciary):** (In support) Representative Rodne, prime sponsor; and Jane Beyer, Department of Social and Health Services.

(Opposed) Kari Reardon, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

**Persons Testifying** (Appropriations): (In support) Jane Beyer, Department of Social and Health Services.

(Opposed) David Lord, Disability Rights Washington.

**Persons Signed In To Testify But Not Testifying** (Judiciary): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.