

SSB 6638 - S AMD 1105

By Senator Wilson, C.

ADOPTED 02/18/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that it is
4 critical to successful community reintegration and recovery for
5 persons who are being released from prison, jail, juvenile
6 rehabilitation, or other state institutions to have access to
7 supportive services and for those who have behavioral health services
8 needs to receive targeted assistance. This act employs multiple
9 strategies to improve reentry services for these individuals. It
10 provides for suspension of medicaid benefits to end before a person's
11 release from custody so that medical assistance benefits can be made
12 available immediately upon the person's release and so that
13 authorized medicaid services can be provided before the person's
14 release if the state receives a medicaid waiver. It creates a reentry
15 services modality within the community behavioral health services act
16 and directs the Washington state health care authority to apply for a
17 section 1115 medicaid waiver so that the state can leverage federal
18 funding to provide reentry services before the person's release. It
19 provides persons applying for a conditional release under chapter
20 10.77 RCW with access to the same community support services
21 available to persons receiving community services under a less
22 restrictive alternative order under chapter 71.05 RCW. Finally, it
23 removes stigmatizing language from the program created under RCW
24 72.09.370 and 71.24.470 and creates a work group to advise the state
25 how to use strategies based on evidence-based, research-based, and
26 promising practices to expand the provision of cost-effective reentry
27 services to new populations.

28 (2) The legislature finds that the support for patients and
29 communities act, H.R. 6 115th Cong. Sec. 271 (2018), provided federal
30 recognition of the importance of providing transition services to
31 persons who are soon to be former inmates of public institutions.
32 This act requires the secretary of health and human services to issue

1 a state medicaid director letter by October 2019 regarding
2 opportunities for states to apply for a section 1115 waiver to
3 improve care transitions by providing medicaid services up to thirty
4 days before a person's expected release. This guidance has not yet
5 been released. New York state and the District of Columbia have
6 already submitted section 1115 waiver applications which remain
7 pending in the year 2019 in anticipation of this opportunity.

8 **Sec. 2.** RCW 74.09.670 and 2016 c 154 s 2 are each amended to
9 read as follows:

10 (1) The authority is directed to suspend, rather than terminate,
11 medical assistance benefits by July 1, 2017, for persons who are
12 incarcerated or committed to a state hospital or other institution or
13 facility. This must include the ability for a person to apply for
14 medical assistance in suspense status during incarceration or civil
15 commitment, and may not depend upon knowledge of the release date of
16 the person. The authority must provide a progress report describing
17 program design and a detailed fiscal estimate to the governor and
18 relevant committees of the legislature by December 1, 2016.

19 (2) When a release date is scheduled for an individual whose
20 medical assistance benefits are suspended under this section, the
21 medical assistance benefits of a person may be restored up to ninety
22 days prior to the person's release to facilitate reentry services,
23 provided that no federal funds may be expended during this period for
24 purposes not permitted by the state's agreements with the federal
25 government.

26 (3) Starting January 1, 2022, the medical assistance benefits of
27 a person that have been suspended under this section must be restored
28 up to ninety days and not less than seven days prior to the person's
29 scheduled release to facilitate reentry services, provided that no
30 federal funds may be expended during this period for purposes not
31 permitted by the state's agreements with the federal government.

32 (4) For the purpose of this section, "reentry services" has the
33 same meaning as under RCW 71.24.025.

34 **Sec. 3.** RCW 71.24.025 and 2019 c 325 s 1004 and 2019 c 324 s 2
35 are each reenacted and amended to read as follows:

36 Unless the context clearly requires otherwise, the definitions in
37 this section apply throughout this chapter.

1 (1) "Acutely mentally ill" means a condition which is limited to
2 a short-term severe crisis episode of:
3 (a) A mental disorder as defined in RCW 71.05.020 or, in the case
4 of a child, as defined in RCW 71.34.020;
5 (b) Being gravely disabled as defined in RCW 71.05.020 or, in the
6 case of a child, a gravely disabled minor as defined in RCW
7 71.34.020; or
8 (c) Presenting a likelihood of serious harm as defined in RCW
9 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.
10 (2) "Alcoholism" means a disease, characterized by a dependency
11 on alcoholic beverages, loss of control over the amount and
12 circumstances of use, symptoms of tolerance, physiological or
13 psychological withdrawal, or both, if use is reduced or discontinued,
14 and impairment of health or disruption of social or economic
15 functioning.
16 (3) "Approved substance use disorder treatment program" means a
17 program for persons with a substance use disorder provided by a
18 treatment program licensed or certified by the department as meeting
19 standards adopted under this chapter.
20 (4) "Authority" means the Washington state health care authority.
21 (5) "Available resources" means funds appropriated for the
22 purpose of providing community behavioral health programs, federal
23 funds, except those provided according to Title XIX of the Social
24 Security Act, and state funds appropriated under this chapter or
25 chapter 71.05 RCW by the legislature during any biennium for the
26 purpose of providing residential services, resource management
27 services, community support services, and other behavioral health
28 services. This does not include funds appropriated for the purpose of
29 operating and administering the state psychiatric hospitals.
30 (6) "Behavioral health administrative services organization"
31 means an entity contracted with the authority to administer
32 behavioral health services and programs under RCW 71.24.381,
33 including crisis services and administration of chapter 71.05 RCW,
34 the involuntary treatment act, for all individuals in a defined
35 regional service area.
36 (7) "Behavioral health provider" means a person licensed under
37 chapter 18.57, 18.57A, 18.71, 18.71A, 18.83, 18.205, 18.225, or 18.79
38 RCW, as it applies to registered nurses and advanced registered nurse
39 practitioners.

1 (8) "Behavioral health services" means mental health services as
2 described in this chapter and chapter 71.36 RCW and substance use
3 disorder treatment services as described in this chapter that,
4 depending on the type of service, are provided by licensed or
5 certified behavioral health agencies, behavioral health providers, or
6 integrated into other health care providers.

7 (9) "Child" means a person under the age of eighteen years.

8 (10) "Chronically mentally ill adult" or "adult who is
9 chronically mentally ill" means an adult who has a mental disorder
10 and meets at least one of the following criteria:

11 (a) Has undergone two or more episodes of hospital care for a
12 mental disorder within the preceding two years; or

13 (b) Has experienced a continuous psychiatric hospitalization or
14 residential treatment exceeding six months' duration within the
15 preceding year; or

16 (c) Has been unable to engage in any substantial gainful activity
17 by reason of any mental disorder which has lasted for a continuous
18 period of not less than twelve months. "Substantial gainful activity"
19 shall be defined by the authority by rule consistent with Public Law
20 92-603, as amended.

21 (11) "Clubhouse" means a community-based program that provides
22 rehabilitation services and is licensed or certified by the
23 department.

24 (12) "Community behavioral health program" means all
25 expenditures, services, activities, or programs, including reasonable
26 administration and overhead, designed and conducted to prevent or
27 treat substance use disorder, mental illness, or both in the
28 community behavioral health system.

29 (13) "Community behavioral health service delivery system" means
30 public, private, or tribal agencies that provide services
31 specifically to persons with mental disorders, substance use
32 disorders, or both, as defined under RCW 71.05.020 and receive
33 funding from public sources.

34 (14) "Community support services" means services authorized,
35 planned, and coordinated through resource management services
36 including, at a minimum, assessment, diagnosis, emergency crisis
37 intervention available twenty-four hours, seven days a week,
38 prescreening determinations for persons who are mentally ill being
39 considered for placement in nursing homes as required by federal law,
40 screening for patients being considered for admission to residential

1 services, diagnosis and treatment for children who are acutely
2 mentally ill or severely emotionally or behaviorally disturbed
3 discovered under screening through the federal Title XIX early and
4 periodic screening, diagnosis, and treatment program, investigation,
5 legal, and other nonresidential services under chapter 71.05 RCW,
6 case management services, psychiatric treatment including medication
7 supervision, counseling, psychotherapy, assuring transfer of relevant
8 patient information between service providers, recovery services, and
9 other services determined by behavioral health administrative
10 services organizations.

11 (15) "Consensus-based" means a program or practice that has
12 general support among treatment providers and experts, based on
13 experience or professional literature, and may have anecdotal or case
14 study support, or that is agreed but not possible to perform studies
15 with random assignment and controlled groups.

16 (16) "County authority" means the board of county commissioners,
17 county council, or county executive having authority to establish a
18 behavioral health administrative services organization, or two or
19 more of the county authorities specified in this subsection which
20 have entered into an agreement to establish a behavioral health
21 administrative services organization.

22 (17) "Department" means the department of health.

23 (18) "Designated crisis responder" has the same meaning as in RCW
24 71.05.020.

25 (19) "Director" means the director of the authority.

26 (20) "Drug addiction" means a disease characterized by a
27 dependency on psychoactive chemicals, loss of control over the amount
28 and circumstances of use, symptoms of tolerance, physiological or
29 psychological withdrawal, or both, if use is reduced or discontinued,
30 and impairment of health or disruption of social or economic
31 functioning.

32 (21) "Early adopter" means a regional service area for which all
33 of the county authorities have requested that the authority purchase
34 medical and behavioral health services through a managed care health
35 system as defined under RCW 71.24.380(6).

36 (22) "Emerging best practice" or "promising practice" means a
37 program or practice that, based on statistical analyses or a well
38 established theory of change, shows potential for meeting the
39 evidence-based or research-based criteria, which may include the use

1 of a program that is evidence-based for outcomes other than those
2 listed in subsection (23) of this section.

3 (23) "Evidence-based" means a program or practice that has been
4 tested in heterogeneous or intended populations with multiple
5 randomized, or statistically controlled evaluations, or both; or one
6 large multiple site randomized, or statistically controlled
7 evaluation, or both, where the weight of the evidence from a systemic
8 review demonstrates sustained improvements in at least one outcome.
9 "Evidence-based" also means a program or practice that can be
10 implemented with a set of procedures to allow successful replication
11 in Washington and, when possible, is determined to be cost-
12 beneficial.

13 (24) "Indian health care provider" means a health care program
14 operated by the Indian health service or by a tribe, tribal
15 organization, or urban Indian organization as those terms are defined
16 in the Indian health care improvement act (25 U.S.C. Sec. 1603).

17 (25) "Intensive behavioral health treatment facility" means a
18 community-based specialized residential treatment facility for
19 individuals with behavioral health conditions, including individuals
20 discharging from or being diverted from state and local hospitals,
21 whose impairment or behaviors do not meet, or no longer meet,
22 criteria for involuntary inpatient commitment under chapter 71.05
23 RCW, but whose care needs cannot be met in other community-based
24 placement settings.

25 (26) "Licensed or certified behavioral health agency" means:

26 (a) An entity licensed or certified according to this chapter or
27 chapter 71.05 RCW;

28 (b) An entity deemed to meet state minimum standards as a result
29 of accreditation by a recognized behavioral health accrediting body
30 recognized and having a current agreement with the department; or

31 (c) An entity with a tribal attestation that it meets state
32 minimum standards for a licensed or certified behavioral health
33 agency.

34 (27) "Licensed physician" means a person licensed to practice
35 medicine or osteopathic medicine and surgery in the state of
36 Washington.

37 (28) "Long-term inpatient care" means inpatient services for
38 persons committed for, or voluntarily receiving intensive treatment
39 for, periods of ninety days or greater under chapter 71.05 RCW.
40 "Long-term inpatient care" as used in this chapter does not include:

1 (a) Services for individuals committed under chapter 71.05 RCW who
2 are receiving services pursuant to a conditional release or a court-
3 ordered less restrictive alternative to detention; or (b) services
4 for individuals voluntarily receiving less restrictive alternative
5 treatment on the grounds of the state hospital.

6 (29) "Managed care organization" means an organization, having a
7 certificate of authority or certificate of registration from the
8 office of the insurance commissioner, that contracts with the
9 authority under a comprehensive risk contract to provide prepaid
10 health care services to enrollees under the authority's managed care
11 programs under chapter 74.09 RCW.

12 (30) "Mental health peer respite center" means a peer-run program
13 to serve individuals in need of voluntary, short-term, noncrisis
14 services that focus on recovery and wellness.

15 (31) Mental health "treatment records" include registration and
16 all other records concerning persons who are receiving or who at any
17 time have received services for mental illness, which are maintained
18 by the department of social and health services or the authority, by
19 behavioral health administrative services organizations and their
20 staffs, by managed care organizations and their staffs, or by
21 treatment facilities. "Treatment records" do not include notes or
22 records maintained for personal use by a person providing treatment
23 services for the entities listed in this subsection, or a treatment
24 facility if the notes or records are not available to others.

25 (32) "Mentally ill persons," "persons who are mentally ill," and
26 "the mentally ill" mean persons and conditions defined in subsections
27 (1), (10), (39), and (40) of this section.

28 (33) "Recovery" means a process of change through which
29 individuals improve their health and wellness, live a self-directed
30 life, and strive to reach their full potential.

31 (34) "Research-based" means a program or practice that has been
32 tested with a single randomized, or statistically controlled
33 evaluation, or both, demonstrating sustained desirable outcomes; or
34 where the weight of the evidence from a systemic review supports
35 sustained outcomes as described in subsection (23) of this section
36 but does not meet the full criteria for evidence-based.

37 (35) "Residential services" means a complete range of residences
38 and supports authorized by resource management services and which may
39 involve a facility, a distinct part thereof, or services which
40 support community living, for persons who are acutely mentally ill,

1 adults who are chronically mentally ill, children who are severely
2 emotionally disturbed, or adults who are seriously disturbed and
3 determined by the behavioral health administrative services
4 organization or managed care organization to be at risk of becoming
5 acutely or chronically mentally ill. The services shall include at
6 least evaluation and treatment services as defined in chapter 71.05
7 RCW, acute crisis respite care, long-term adaptive and rehabilitative
8 care, and supervised and supported living services, and shall also
9 include any residential services developed to service persons who are
10 mentally ill in nursing homes, residential treatment facilities,
11 assisted living facilities, and adult family homes, and may include
12 outpatient services provided as an element in a package of services
13 in a supported housing model. Residential services for children in
14 out-of-home placements related to their mental disorder shall not
15 include the costs of food and shelter, except for children's long-
16 term residential facilities existing prior to January 1, 1991.

17 (36) "Resilience" means the personal and community qualities that
18 enable individuals to rebound from adversity, trauma, tragedy,
19 threats, or other stresses, and to live productive lives.

20 (37) "Resource management services" mean the planning,
21 coordination, and authorization of residential services and community
22 support services administered pursuant to an individual service plan
23 for: (a) Adults and children who are acutely mentally ill; (b) adults
24 who are chronically mentally ill; (c) children who are severely
25 emotionally disturbed; or (d) adults who are seriously disturbed and
26 determined by a behavioral health administrative services
27 organization or managed care organization to be at risk of becoming
28 acutely or chronically mentally ill. Such planning, coordination, and
29 authorization shall include mental health screening for children
30 eligible under the federal Title XIX early and periodic screening,
31 diagnosis, and treatment program. Resource management services
32 include seven day a week, twenty-four hour a day availability of
33 information regarding enrollment of adults and children who are
34 mentally ill in services and their individual service plan to
35 designated crisis responders, evaluation and treatment facilities,
36 and others as determined by the behavioral health administrative
37 services organization or managed care organization, as applicable.

38 (38) "Secretary" means the secretary of the department of health.

39 (39) "Seriously disturbed person" means a person who:

1 (a) Is gravely disabled or presents a likelihood of serious harm
2 to himself or herself or others, or to the property of others, as a
3 result of a mental disorder as defined in chapter 71.05 RCW;

4 (b) Has been on conditional release status, or under a less
5 restrictive alternative order, at some time during the preceding two
6 years from an evaluation and treatment facility or a state mental
7 health hospital;

8 (c) Has a mental disorder which causes major impairment in
9 several areas of daily living;

10 (d) Exhibits suicidal preoccupation or attempts; or

11 (e) Is a child diagnosed by a mental health professional, as
12 defined in chapter 71.34 RCW, as experiencing a mental disorder which
13 is clearly interfering with the child's functioning in family or
14 school or with peers or is clearly interfering with the child's
15 personality development and learning.

16 (40) "Severely emotionally disturbed child" or "child who is
17 severely emotionally disturbed" means a child who has been determined
18 by the behavioral health administrative services organization or
19 managed care organization, if applicable, to be experiencing a mental
20 disorder as defined in chapter 71.34 RCW, including those mental
21 disorders that result in a behavioral or conduct disorder, that is
22 clearly interfering with the child's functioning in family or school
23 or with peers and who meets at least one of the following criteria:

24 (a) Has undergone inpatient treatment or placement outside of the
25 home related to a mental disorder within the last two years;

26 (b) Has undergone involuntary treatment under chapter 71.34 RCW
27 within the last two years;

28 (c) Is currently served by at least one of the following child-
29 serving systems: Juvenile justice, child-protection/welfare, special
30 education, or developmental disabilities;

31 (d) Is at risk of escalating maladjustment due to:

32 (i) Chronic family dysfunction involving a caretaker who is
33 mentally ill or inadequate;

34 (ii) Changes in custodial adult;

35 (iii) Going to, residing in, or returning from any placement
36 outside of the home, for example, psychiatric hospital, short-term
37 inpatient, residential treatment, group or foster home, or a
38 correctional facility;

39 (iv) Subject to repeated physical abuse or neglect;

40 (v) Drug or alcohol abuse; or

1 (vi) Homelessness.

2 (41) "State minimum standards" means minimum requirements
3 established by rules adopted and necessary to implement this chapter
4 by:

5 (a) The authority for:

6 (i) Delivery of mental health and substance use disorder
7 services; and

8 (ii) Community support services and resource management services;

9 (b) The department of health for:

10 (i) Licensed or certified behavioral health agencies for the
11 purpose of providing mental health or substance use disorder programs
12 and services, or both;

13 (ii) Licensed behavioral health providers for the provision of
14 mental health or substance use disorder services, or both; and

15 (iii) Residential services.

16 (42) "Substance use disorder" means a cluster of cognitive,
17 behavioral, and physiological symptoms indicating that an individual
18 continues using the substance despite significant substance-related
19 problems. The diagnosis of a substance use disorder is based on a
20 pathological pattern of behaviors related to the use of the
21 substances.

22 (43) "Tribe," for the purposes of this section, means a federally
23 recognized Indian tribe.

24 (44) "Reentry services" means targeted services to support
25 community reintegration and recovery for a person with an identified
26 behavioral health services need who is scheduled or expected to be
27 released from a prison, jail, juvenile rehabilitation facility, state
28 hospital, or other institution or facility within ninety days.
29 "Reentry services" also means targeted services provided to such a
30 person following release to support the person's recovery and
31 stability in the community. "Reentry services" may include:

32 (a) Engagement, assessment, recovery support, and release
33 planning provided up to ninety days prior to a scheduled or expected
34 release provided by behavioral health clinicians, certified peer
35 counselors, or both;

36 (b) Intensive case management, peer bridger services, or both
37 provided during the period beginning immediately upon the person's
38 release which may decrease in intensity over time depending on the
39 specific needs of the individual;

1 (c) Coordination of mental health services, assistance with
2 unfunded medical expenses, assistance obtaining substance use
3 disorder treatment, housing, employment services, educational or
4 vocational training, transportation, independent living skills,
5 parenting education, anger management services, peer services, and
6 such other services as the case manager deems necessary; and

7 (d) Provision of services under contract through the reentry
8 community services program under RCW 72.09.370 and 71.24.470.

9 NEW SECTION. Sec. 4. (1) The health care authority shall, after
10 the release of federal guidance, apply for a section 1115 medicaid
11 waiver to provide reentry services as defined under RCW 71.24.025
12 through the state medicaid program to persons who are expecting to be
13 released from a public institution and are otherwise eligible to
14 receive medical assistance. The authority shall consult with the work
15 group established under section 10 of this act about the details of
16 the application and how to maximize support for Washington state
17 reentry programs within the limitations of what the centers of
18 medicare and medicaid services are likely to approve.

19 (2) In developing its application, the health care authority must
20 explicitly consider how to best leverage the 1115 medicaid waiver
21 application for the following purposes:

22 (a) To provide federal funding support for the state-only
23 portions of the reentry community services program under RCW
24 72.09.370 and 71.24.470;

25 (b) To provide sustainable funding for cost-effective or cost-
26 neutral reentry or diversion services provided by pilot programs
27 funded by contempt fines in *Trueblood, et al., v. DSHS, et al.*, No.
28 15-35462; and

29 (c) To accommodate the special needs of persons in jail who tend
30 to stay for short periods of time and not have access to a documented
31 anticipated release date.

32 (3) The authority shall consider how evaluations of the reentry
33 community services program created under RCW 72.09.370 and 71.24.470
34 conducted by the Washington state institute for public policy may be
35 used to establish an evidence base for its waiver application
36 demonstrating the potential for delivering cost-effective reentry
37 services in the state of Washington.

38 (4) The health care authority shall update the governor and
39 appropriate committees of the legislature in writing upon submission

1 of its section 1115 medicaid waiver application, at the point at
2 which such application obtains final approval or denial from the
3 centers for medicaid and medicare services, and at other critical
4 junctures at the discretion of the health care authority.

5 **Sec. 5.** RCW 71.24.385 and 2019 c 325 s 1023 and 2019 c 264 s 6
6 are each reenacted and amended to read as follows:

7 (1) Within funds appropriated by the legislature for this
8 purpose, behavioral health administrative services organizations and
9 managed care organizations, as applicable, shall develop the means to
10 serve the needs of people:

11 (a) With mental disorders residing within the boundaries of their
12 regional service area. Elements of the program may include:

- 13 (i) Crisis diversion services;
- 14 (ii) Evaluation and treatment and community hospital beds;
- 15 (iii) Residential treatment;
- 16 (iv) Programs for intensive community treatment;
- 17 (v) Outpatient services, including family support;
- 18 (vi) Peer support services;
- 19 (vii) Community support services;
- 20 (viii) Resource management services; (~~and~~)
- 21 (ix) Reentry services; and
- 22 (x) Supported housing and supported employment services.

23 (b) With substance use disorders and their families, people
24 incapacitated by alcohol or other psychoactive chemicals, and
25 intoxicated people.

26 (i) Elements of the program shall include, but not necessarily be
27 limited to, a continuum of substance use disorder treatment services
28 that includes:

- 29 (A) Withdrawal management;
- 30 (B) Residential treatment; and
- 31 (C) Outpatient treatment.

32 (ii) The program may include peer support, supported housing,
33 supported employment, crisis diversion, recovery support services,
34 reentry services, or technology-based recovery supports.

35 (iii) The authority may contract for the use of an approved
36 substance use disorder treatment program or other individual or
37 organization if the director considers this to be an effective and
38 economical course to follow.

1 (2) (a) The managed care organization and the behavioral health
2 administrative services organization shall have the flexibility,
3 within the funds appropriated by the legislature for this purpose and
4 the terms of their contract, to design the mix of services that will
5 be most effective within their service area of meeting the needs of
6 people with behavioral health disorders and avoiding placement of
7 such individuals at the state mental hospital. Managed care
8 organizations and behavioral health administrative services
9 organizations are encouraged to maximize the use of evidence-based
10 practices and alternative resources with the goal of substantially
11 reducing and potentially eliminating the use of institutions for
12 mental diseases.

13 (b) Managed care organizations and behavioral health
14 administrative services organizations may allow reimbursement to
15 providers for services delivered through a partial hospitalization or
16 intensive outpatient program. Such payment and services are distinct
17 from the state's delivery of wraparound with intensive services under
18 the *T.R. v. Strange and Birch* settlement agreement.

19 (3) (a) Treatment provided under this chapter must be purchased
20 primarily through managed care contracts.

21 (b) Consistent with RCW 71.24.580, services and funding provided
22 through the criminal justice treatment account are intended to be
23 exempted from managed care contracting.

24 **Sec. 6.** RCW 10.77.150 and 2010 c 263 s 5 are each amended to
25 read as follows:

26 (1) Persons examined pursuant to RCW 10.77.140 may make
27 application to the secretary for conditional release. The secretary
28 shall, after considering the reports of experts or professional
29 persons conducting the examination pursuant to RCW 10.77.140, forward
30 to the court of the county which ordered the person's commitment the
31 person's application for conditional release as well as the
32 secretary's recommendations concerning the application and any
33 proposed terms and conditions upon which the secretary reasonably
34 believes the person can be conditionally released. Conditional
35 release may also contemplate partial release for work, training, or
36 educational purposes.

37 (2) In instances in which persons examined pursuant to RCW
38 10.77.140 have not made application to the secretary for conditional
39 release, but the secretary, after considering the reports of experts

1 or professional persons conducting the examination pursuant to RCW
2 10.77.140, reasonably believes the person may be conditionally
3 released, the secretary may submit a recommendation for release to
4 the court of the county that ordered the person's commitment. The
5 secretary's recommendation must include any proposed terms and
6 conditions upon which the secretary reasonably believes the person
7 may be conditionally released. Conditional release may also include
8 partial release for work, training, or educational purposes. Notice
9 of the secretary's recommendation under this subsection must be
10 provided to the person for whom the secretary has made the
11 recommendation for release and to his or her attorney.

12 (3) (a) The court of the county which ordered the person's
13 commitment, upon receipt of an application or recommendation for
14 conditional release with the secretary's recommendation for
15 conditional release terms and conditions, shall within thirty days
16 schedule a hearing. The court may schedule a hearing on applications
17 recommended for disapproval by the secretary.

18 (b) The prosecuting attorney shall represent the state at such
19 hearings and shall have the right to have the patient examined by an
20 expert or professional person of the prosecuting attorney's choice.
21 If the committed person is indigent, and he or she so requests, the
22 court shall appoint a qualified expert or professional person to
23 examine the person on his or her behalf.

24 (c) The issue to be determined at such a hearing is whether or
25 not the person may be released conditionally without substantial
26 danger to other persons, or substantial likelihood of committing
27 criminal acts jeopardizing public safety or security.

28 (d) The court, after the hearing, shall rule on the secretary's
29 recommendations, and if it disapproves of conditional release, may do
30 so only on the basis of substantial evidence. The court may modify
31 the suggested terms and conditions on which the person is to be
32 conditionally released. Pursuant to the determination of the court
33 after hearing, the committed person shall thereupon be released on
34 such conditions as the court determines to be necessary, or shall be
35 remitted to the custody of the secretary. If the order of conditional
36 release includes a requirement for the committed person to report to
37 a community corrections officer, the order shall also specify that
38 the conditionally released person shall be under the supervision of
39 the secretary of corrections or such person as the secretary of
40 corrections may designate and shall follow explicitly the

1 instructions of the secretary of corrections including reporting as
2 directed to a community corrections officer, remaining within
3 prescribed geographical boundaries, and notifying the community
4 corrections officer prior to making any change in the offender's
5 address or employment. If the order of conditional release includes a
6 requirement for the committed person to report to a community
7 corrections officer, the community corrections officer shall notify
8 the secretary or the secretary's designee, if the person is not in
9 compliance with the court-ordered conditions of release.

10 (4) If the court determines that receiving regular or periodic
11 medication or other medical treatment shall be a condition of the
12 committed person's release, then the court shall require him or her
13 to report to a physician or other medical or mental health
14 practitioner for the medication or treatment. In addition to
15 submitting any report required by RCW 10.77.160, the physician or
16 other medical or mental health practitioner shall immediately upon
17 the released person's failure to appear for the medication or
18 treatment or upon a change in mental health condition that renders
19 the patient a potential risk to the public report to the court, to
20 the prosecuting attorney of the county in which the released person
21 was committed, to the secretary, and to the supervising community
22 corrections officer.

23 (5) Any person, whose application for conditional release has
24 been denied, may reapply after a period of six months from the date
25 of denial.

26 (6) A licensed or certified behavioral health agency as defined
27 under RCW 71.24.025 that provides community behavioral health
28 services to a person placed on conditional release under this section
29 or agrees to provide such services upon the person's conditional
30 release shall provide equivalent services to the person as it would
31 provide to a person who is court ordered to receive less restrictive
32 alternative treatment under RCW 71.05.585. A licensed or certified
33 behavioral health agency must participate in reentry planning when a
34 person is recommended for conditional release under this section and
35 may provide reentry services as defined in RCW 71.24.025 in
36 coordination with state hospital staff and the person's managed care
37 organization, behavioral health administrative services organization,
38 or private insurance carrier.

1 **Sec. 7.** RCW 72.09.370 and 2019 c 325 s 5025 are each amended to
2 read as follows:

3 (1) The ~~((offender))~~ reentry community ~~((safety))~~ services
4 program is established to provide intensive services to ~~((offenders))~~
5 incarcerated persons identified under this subsection and to thereby
6 promote successful reentry, public safety, and recovery. The
7 secretary shall identify ~~((offenders))~~ persons in confinement or
8 partial confinement who: (a) Are reasonably believed to ~~((be~~
9 dangerous)) present a danger to themselves or others if released to
10 the community without supportive services; and (b) have a mental
11 disorder. In determining ~~((an offender's dangerousness))~~ whether an
12 incarcerated person may meet these criteria, the secretary shall
13 consider behavior known to the department and factors, based on
14 research, that are linked to ~~((an increased))~~ risk ~~((for))~~ of
15 dangerousness ~~((of offenders))~~ for persons with mental illnesses who
16 are involved with the criminal justice system and shall include
17 consideration of ~~((an offender's))~~ the person's substance use
18 disorder or history of substance abuse.

19 (2) Prior to release of ~~((an offender))~~ a person identified under
20 this section, a team consisting of representatives of the department
21 of corrections, the health care authority, and, as necessary, the
22 indeterminate sentence review board, divisions or administrations
23 within the department of social and health services, specifically
24 including the division of developmental disabilities, the appropriate
25 managed care organization ~~((contracted with the health care~~
26 authority, the appropriate)) or behavioral health administrative
27 services organization, and ~~((the))~~ reentry community services
28 providers, as appropriate, shall develop a plan, as determined
29 necessary by the team, for delivery of treatment and support services
30 to the ~~((offender))~~ incarcerated person upon release. In developing
31 the plan, the ~~((offender))~~ person shall be offered assistance in
32 executing a mental health advance directive under chapter 71.32 RCW,
33 after being fully informed of the benefits, scope, and purposes of
34 such directive. The team may include a school district representative
35 for ~~((offenders))~~ incarcerated persons under the age of twenty-one.
36 The team shall consult with the ~~((offender's))~~ person's counsel, if
37 any, and, as appropriate, the ~~((offender's))~~ person's family and
38 community. The team shall notify the crime victim/witness program,
39 which shall provide notice to all people registered to receive notice
40 under RCW 72.09.712 of the proposed release plan developed by the

1 team. Victims, witnesses, and other interested people notified by the
2 department may provide information and comments to the department on
3 potential safety risk to specific individuals or classes of
4 individuals posed by the specific ((~~offender~~)) incarcerated person.
5 The team may recommend: (a) That the ((~~offender~~)) person be evaluated
6 by ((~~the~~)) a designated crisis responder, as defined in chapter 71.05
7 RCW; (b) department-supervised community treatment; or (c) voluntary
8 community mental health or substance use disorder or abuse treatment.

9 (3) Prior to release of an ((~~offender~~)) incarcerated person
10 identified under this section, the team shall determine whether or
11 not an evaluation by a designated crisis responder is needed. If an
12 evaluation is recommended, the supporting documentation shall be
13 immediately forwarded to the appropriate designated crisis responder.
14 The supporting documentation shall include the ((~~offender's~~))
15 person's criminal history, history of judicially required or
16 administratively ordered involuntary antipsychotic medication while
17 in confinement, and any known history of involuntary civil
18 commitment.

19 (4) If an evaluation by a designated crisis responder is
20 recommended by the team, such evaluation shall occur not more than
21 ten days, nor less than five days, prior to release.

22 (5) A second evaluation by a designated crisis responder shall
23 occur on the day of release if requested by the team, based upon new
24 information or a change in the ((~~offender's~~)) person's mental
25 condition, and the initial evaluation did not result in an emergency
26 detention or a summons under chapter 71.05 RCW.

27 (6) If the designated crisis responder determines an emergency
28 detention under chapter 71.05 RCW is necessary, the department shall
29 release the ((~~offender~~)) person only to a state hospital or to a
30 consenting evaluation and treatment facility or secure withdrawal
31 management and stabilization facility. The department shall arrange
32 transportation of the ((~~offender~~)) person to the hospital or
33 facility.

34 (7) If the designated crisis responder believes that a less
35 restrictive alternative treatment is appropriate, he or she shall
36 seek a summons, pursuant to the provisions of chapter 71.05 RCW, to
37 require the ((~~offender~~)) person to appear at an evaluation and
38 treatment facility or secure withdrawal management and stabilization
39 facility. If a summons is issued, the ((~~offender~~)) person shall
40 remain within the corrections facility until completion of his or her

1 term of confinement and be transported, by corrections personnel on
2 the day of completion, directly to the identified (~~evaluation and~~
3 ~~treatment~~) facility.

4 (8) The secretary shall adopt rules to implement this section.

5 **Sec. 8.** RCW 71.24.470 and 2019 c 325 s 1030 are each amended to
6 read as follows:

7 (1) The director shall contract, to the extent that funds are
8 appropriated for this purpose, for case management services and such
9 other services as the director deems necessary to assist
10 (~~offenders~~) incarcerated persons identified under RCW 72.09.370 for
11 participation in the (~~offender~~) reentry community (~~safety~~)
12 services program. The contracts may be with any qualified and
13 appropriate entities.

14 (2) The case manager has the authority to assist these
15 (~~offenders~~) individuals in obtaining the services, as set forth in
16 the plan created under RCW 72.09.370(2), for up to five years. The
17 services may include coordination of mental health services,
18 assistance with unfunded medical expenses, assistance obtaining
19 substance use disorder treatment, housing, employment services,
20 educational or vocational training, independent living skills,
21 parenting education, anger management services, peer services, and
22 such other services as the case manager deems necessary.

23 (3) The legislature intends that funds appropriated for the
24 purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section
25 are to supplement and not to supplant general funding. Funds
26 appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212,
27 and this section are not to be considered available resources as
28 defined in RCW 71.24.025 and are not subject to the priorities,
29 terms, or conditions in the appropriations act established pursuant
30 to RCW 71.24.035.

31 (4) The (~~offender~~) reentry community (~~safety~~) services
32 program was formerly known as the community integration assistance
33 program.

34 **Sec. 9.** RCW 71.24.480 and 2019 c 325 s 1031 are each amended to
35 read as follows:

36 (1) A licensed or certified behavioral health agency acting in
37 the course of the (~~provider's~~) agency's duties under this
38 chapter(~~, is~~) and its individual employees are not liable for civil

1 damages resulting from the injury or death of another caused by a
2 participant in the ((~~offender~~)) reentry community ((~~safety~~)) services
3 program who is a client of the ((~~provider or organization~~)) agency,
4 unless the act or omission of the ((~~provider or organization~~)) agency
5 or employee constitutes:

6 (a) Gross negligence;

7 (b) Willful or wanton misconduct; or

8 (c) A breach of the duty to warn of and protect from a client's
9 threatened violent behavior if the client has communicated a serious
10 threat of physical violence against a reasonably ascertainable victim
11 or victims.

12 (2) In addition to any other requirements to report violations,
13 the licensed or certified behavioral health agency shall report ((~~an~~
14 ~~offender's~~)) a reentry community services program participant's
15 expressions of intent to harm or other predatory behavior, regardless
16 of whether there is an ascertainable victim, in progress reports and
17 other established processes that enable courts and supervising
18 entities to assess and address the progress and appropriateness of
19 treatment.

20 (3) A licensed or certified behavioral health agency's mere act
21 of treating a participant in the ((~~offender~~)) reentry community
22 ((~~safety~~)) services program is not negligence. Nothing in this
23 subsection alters the licensed or certified behavioral health
24 agency's normal duty of care with regard to the client.

25 (4) The limited liability provided by this section applies only
26 to the conduct of licensed or certified behavioral health agencies
27 and their employees and does not apply to conduct of the state.

28 (5) For purposes of this section, "participant in the
29 ((~~offender~~)) reentry community ((~~safety~~)) services program" means a
30 person who has been identified under RCW 72.09.370 as ((~~an offender~~))
31 a person who: (a) Is reasonably believed to ((~~be dangerous~~)) present
32 a danger to himself or herself or others if released to the community
33 without supportive services; and (b) has a mental disorder.

34 NEW SECTION. Sec. 10. A new section is added to chapter 71.24
35 RCW to read as follows:

36 (1) The authority shall convene a reentry services work group to
37 consider ways to improve reentry services for persons with an
38 identified behavioral health services need. The work group shall:

1 (a) Advise the authority on its waiver application under section
2 4 of this act;

3 (b) Consider how to expand, replicate, or adapt the essential
4 elements of the reentry community services program under RCW
5 72.09.370 and 71.24.470 while preserving those aspects most essential
6 to stable reentry and recovery to provide reentry community services
7 to:

8 (i) A larger set of persons incarcerated in prison including up
9 to all persons releasing from prison who are reasonably believed to
10 present either a high risk of violent recidivism, a high risk of
11 nonviolent recidivism, or both in combination with a mental disorder
12 or a substance use disorder, or other subsets of persons at the
13 discretion of the work group;

14 (ii) Persons who are committed to a state hospital or long-term
15 involuntary behavioral health treatment facility under chapter 10.77
16 RCW or RCW 71.05.280(3), who are reasonably believed to be ready for
17 safe discharge to an appropriate community placement;

18 (iii) Persons expecting release from confinement under chapter
19 13.40 RCW;

20 (iv) Persons expecting release from confinement in jail; and/or

21 (v) Other populations recommended by the work group;

22 (c) Evaluate whether it would be better for administration of
23 contracts for services under the reentry community services program
24 remain at the state level or instead be administered by managed care
25 organizations or behavioral health administrative services
26 organizations;

27 (d) Identify the costs and savings that could be realized through
28 expanding or replicating the reentry community services program as
29 described under (b) of this subsection or through other means of
30 providing reentry services;

31 (e) Evaluate the sustainability of promising reentry services or
32 diversion services provided by pilot programs funded by contempt
33 fines in *Trueblood, et al., v. DSHS, et al.*, No. 15-35462;

34 (f) Recommend means of funding and staffing expanded reentry
35 services; and

36 (g) Consider how peer services can be incorporated into the
37 reentry services programs.

38 (2) The authority shall invite participation in the work group by
39 stakeholders including but not limited to representatives from:
40 Disability rights Washington; behavioral health advocacy

1 organizations; behavioral health peers; reentry community services
2 providers; community behavioral health agencies; advocates for
3 persons with developmental disabilities; the department of
4 corrections; the department of children, youth, and families; the
5 Washington association of sheriffs and police chiefs; prosecutors;
6 defense attorneys; the Washington state association of counties; King
7 county behavioral health and recovery division; the department of
8 social and health services; state hospital employees who serve
9 patients committed under chapters 10.77 and 71.05 RCW; the public
10 safety review panel under RCW 10.77.270; managed care organizations;
11 behavioral health administrative services organizations; the
12 Washington statewide reentry council; the Washington state senate and
13 house of representatives; and the Washington state institute for
14 public policy.

15 (3) The work group must provide a progress report to the governor
16 and appropriate committees of the legislature by December 1, 2020,
17 and a final report by December 1, 2021.

18 NEW SECTION. **Sec. 11.** The Washington state health care
19 authority shall revise its contracts with managed care organizations
20 and behavioral health administrative services organizations to
21 require those entities to ensure that providers that contract to
22 provide services through the reentry community services program under
23 RCW 72.09.370 and 71.24.330 are available to their eligible clients
24 in every regional service area.

25 NEW SECTION. **Sec. 12.** The Washington state institute for public
26 policy shall update its previous evaluations of the reentry community
27 services program under RCW 72.09.370 and 71.24.470, considering
28 impacts on both recidivism and the use of public services. The
29 institute shall collaborate with the work group established under
30 section 10 of this act to determine research parameters and
31 additional research questions that would support the work of the work
32 group including, but not limited to, the potential cost, benefit, and
33 risks to the state of expanding or replicating the reentry community
34 services program; and what modifications to the program are most and
35 least likely to prove advantageous based on the current state of
36 knowledge about evidence-based, research-based, and promising
37 programs. The department of corrections, health care authority,
38 administrative office of the courts, King county, and department of

1 social and health services must cooperate with the institute to
2 facilitate access to data or other resources necessary to complete
3 this work. The institute must provide a preliminary report by
4 December 1, 2020, and a final report by November 1, 2021, to the
5 governor and relevant committees of the legislature."

SSB 6638 - S AMD 1105

By Senator Wilson, C.

ADOPTED 02/18/2020

6 On page 1, line 2 of the title, after "institutions;" strike the
7 remainder of the title and insert "amending RCW 74.09.670, 10.77.150,
8 72.09.370, 71.24.470, and 71.24.480; reenacting and amending RCW
9 71.24.025 and 71.24.385; adding a new section to chapter 71.24 RCW;
10 and creating new sections."

EFFECT: Changes the direction to HCA to apply for a section 1115 Medicaid waiver after receiving guidance from the federal government and includes additional instructions and findings. Modifies the instructions for and invited members of the Reentry Services Work Group.

--- END ---