

HOUSE BILL REPORT

ESSB 6638

As Reported by House Committee On: Public Safety

Title: An act relating to providing reentry services to persons releasing from prison, jail, and other institutions.

Brief Description: Providing reentry services.

Sponsors: Senate Committee on Human Services, Reentry & Rehabilitation (originally sponsored by Senators Wilson, C., Lovelett, Randall, Nguyen, Das and Darneille).

Brief History:

Committee Activity:

Public Safety: 2/25/20, 2/27/20 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Provides for the restoration of Medicaid benefits up to 90 days prior to release for incarcerated or civilly committed persons whose benefits have been suspended and who have a scheduled release date.
- Requires the Health Care Authority (HCA) to apply for a section 1115 Medicaid waiver to provide reentry services through the state Medicaid program to persons who are releasing from a public institution.
- Outlines reentry services that may be provided as part of community behavioral health services.
- Requires a behavioral health agency to provide equivalent services to a conditionally released person committed following an insanity acquittal as are provided to conditionally released persons who are committed under the Involuntary Treatment Act.
- Requires the HCA to convene a reentry services work group to consider ways to improve reentry services for persons with an identified behavioral health services need.
- Renames the Offender Reentry Community Safety Program the Reentry Community Services Program, and makes various changes to the program.

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.

- Requires the Washington State Institute for Public Policy to update its previous evaluations of the Reentry Community Services Program, considering impacts on both recidivism and the use of public services.
- Modifies the process for an incarcerated person to resolve any untried indictment, information, or complaint pending against the person within 120 days.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Omeara Harrington (786-7136).

Background:

Medicaid and Community Behavioral Health Services.

The Health Care Authority (HCA) provides medical care services to eligible low-income state residents and their families, primarily through the Medicaid program. Coverage for medical services is primarily provided through managed care systems. Managed care is a prepaid, comprehensive system for delivering a complete medical benefits package that is available for eligible families, children under age 19, low-income adults, certain disabled individuals, and pregnant women. Since January 1, 2020, all behavioral health services and medical care services have been fully integrated in a managed care health system for most Medicaid clients and operated by managed care organizations (MCOs).

While most Medicaid clients receive behavioral health services through a managed health care system, behavioral health administrative service organizations (BHASOs) administer certain behavioral health services that are not covered by the managed health care system within a specific regional service area. There are 10 BHASOs in Washington. The services provided by a BHASO include maintaining continuously available crisis response services, administering services related to the involuntary commitment of adults and minors, coordinating planning for persons transitioning from long-term commitments, maintaining an adequate network of evaluation and treatment services, and providing services to non-Medicaid clients in accordance with contract criteria.

Suspension of Medicaid Benefits During Incarceration and Civil Commitment.

Federal standards for the Medicaid program exclude payments for care or services for any individual who is an inmate of a public institution, except for certain inpatient services at a hospital. For incarcerated persons, historically, the HCA maintained a policy of allowing Medicaid status to remain unchanged for up to 30 days while confined, after which point the person's Medicaid enrollment would be terminated.

Federal Medicaid standards also prohibit payment for care or services for individuals who are patients at an institution for mental diseases. An "institution for mental diseases" is a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases. In 2014 Washington received federal waiver authority to allow Medicaid funds to be used for short-term stays in an institution for mental diseases.

Pursuant to 2017 legislation, the HCA must now suspend, rather than terminate, medical assistance for persons who have been incarcerated or committed to a state hospital, regardless of the person's release date. Additionally, a person who has been incarcerated or committed to a state hospital must be able to apply for medical assistance in suspense status while incarcerated or committed.

Medicaid Waivers.

Under section 1115 of the Social Security Act, the Secretary of Health and Human Services has authority to grant waivers from certain Medicaid requirements to allow states to demonstrate innovative approaches in their Medicaid programs. The purpose of section 1115 demonstration projects is to demonstrate and evaluate policy approaches such as expanding eligibility, providing services not typically covered, and using innovative service delivery systems.

In 2018 Congress enacted the SUPPORT for Patients and Communities Act, which addressed transition services provided to persons who are soon-to-be released from public institutions such as prisons or jails. The law contains a provision requiring the Secretary of Health and Human Services to issue a State Medicaid Director letter providing guidance on how states may apply for a section 1115 Medicaid waiver allowing them to provide Medicaid services to otherwise eligible persons who are within 30 days of expected release from incarceration.

Offender Reentry Community Safety Program.

The Offender Reentry Community Safety Program (ORCS) was established to promote public safety through provision of intensive services to certain Department of Corrections (DOC) offenders who have a mental disorder and are reasonably believed to be dangerous to themselves or others. In determining an offender's dangerousness, the DOC must consider behavior known to the DOC and factors, based on research, that are linked to an increased risk for dangerousness of offenders with mental illnesses, and must consider the offender's substance use disorder or abuse. Prior to release of a qualifying offender, a team consisting of representatives of the DOC, the HCA, and, as necessary, other entities and agencies, including the appropriate MCO and BHASO, as well as providers, must develop a plan for delivery of treatment and support services to the offender upon release. In appropriate cases, an offender may be evaluated in an evaluation and treatment facility for civil commitment under the Involuntary Treatment Act (ITA) following release.

Conditional Release of Civilly Committed Persons.

A person may be civilly committed following an acquittal based on a finding of not guilty by reason of insanity (NGRI) upon determination that the acquitted person presents a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions. Conditional release of a person committed as NGRI may be granted if the court determines that the person may be

released conditionally without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security.

Under the ITA, a person may be civilly committed by a court for involuntary mental health treatment if he or she, due to a mental disorder, poses a likelihood of serious harm or is gravely disabled. When entering an order for involuntary treatment, if the court finds that the person poses a likelihood of serious harm or is gravely disabled, but that treatment in a less restrictive alternative (LRA) than detention is in the best interest of the person or others, the court must order conditional release to an LRA placement. Treatment of a person civilly committed under the ITA who is conditionally released to an LRA must include, at a minimum: assignment of a care coordinator; an intake evaluation with the LRA provider; a psychiatric evaluation; a schedule of regular contacts with the provider of LRA treatment services for the duration of the order; a transition plan addressing access to continued services at the expiration of the order; and an individual crisis plan. Additional optional services are outlined.

Required minimum services are not outlined for persons conditionally released from NGRI commitment.

Trueblood-Funded Diversion Programs.

In *Trueblood v. the Department of Social and Health Services* (2015), a federal district court found that the State of Washington was violating the constitutional rights of in-jail defendants awaiting competency evaluation and restoration services. As a result, the Department of Social and Health Services (DSHS) was ordered to provide in-jail competency evaluations within 14 days of a court order and inpatient competency evaluation and restoration services within seven days of a court order. The court found the state in contempt for continued noncompliance in 2017, and subsequently assessed over \$83 million in fines before the state reached a settlement in December 2018. As part of the settlement, contempt funds must be used to fund programs aimed at diverting class members from the criminal justice system.

Resolution of Untried Criminal Matters Involving Incarcerated Persons.

An accused person has the right to a speedy trial both under the federal constitution and under court rules. Court rule provides that a person must be brought to trial within 60 days of arraignment if he or she is detained in jail on the matter, and within 90 days if not detained. If a case is not brought to trial within the designated time frames, the case is dismissed with prejudice. Certain periods are excluded from the trial timelines, including the time during which the defendant is detained in jail or prison outside the charging county.

Under statute, a person imprisoned in a penal or correctional institution may request to be brought to trial within 120 days on any untried indictment, information, or complaint. The imprisoned person must provide notice of the request for resolution of the untried matter to the superintendent of the institution with custody over the person. The superintendent must forward the request to the prosecuting attorney and the superior court in the untried matter, along with certification of the person's term of commitment, the time already served and remaining, earned good time, time of parole eligibility, and decisions of the Indeterminate Sentence Review Board.

Summary of Amended Bill:

Reentry Community Services Program (Formerly the Offender Reentry Community Safety Program).

The ORCS program is renamed the Reentry Community Services Program, and the objectives of the program are expanded to include successful reentry and recovery. Terminology throughout the relevant provisions is modified to refer to "incarcerated persons" rather than "offenders," along with other wording and terminology changes. Rather than assessing whether an incarcerated person is reasonably believed to be dangerous, the assessment is as to whether the person is reasonably believed to present a danger to themselves or others if released to the community without supportive services.

Reentry community services providers are included in the team engaged in planning for delivery of treatment and services upon the incarcerated person's release. The list of services that may be provided to program participants is expanded to include peer services. Incarcerated persons under consideration for civil commitment under the ITA following release may be detained to or ordered to appear at a secure withdrawal management and stabilization facility, in addition to an evaluation and treatment facility.

The HCA must revise its contracts with MCOs and BHASOs to ensure that providers that contract to provide services to the Reentry Community Services Program are available to eligible clients in every regional service area.

Reentry Services as Part of Community Behavioral Health Services.

The MCOs and BHASOs may provide reentry services as part of their community behavioral health services. "Reentry services" include: targeted services to support community reintegration and recovery for a person with an identified behavioral health services need who is scheduled or expected to be released from a prison, jail, juvenile rehabilitation facility, state hospital, or other institution or facility within 90 days; and targeted services provided to a person following release to support the person's recovery and stability in the community.

Reentry services may include:

- engagement, assessment, recovery support, and release planning provided up to 90 days prior to a scheduled or expected release provided by behavioral health clinicians, certified peer counselors, or both;
- intensive case management, peer bridger services, or both, beginning immediately upon release, which may decrease in intensity over time depending on the specific needs of the individual;
- coordination of mental health services, assistance with unfunded medical expenses, assistance obtaining substance use disorder treatment, housing, employment services, educational or vocational training, transportation, independent living skills, parenting education, anger management services, peer services, and other services as the case manager deems necessary; and
- provision of services under contract through the Reentry Community Services Program.

Suspension of Medicaid Benefits During Incarceration and Civil Commitment.

The direction to the HCA to suspend, rather than terminate, medical assistance benefits to persons incarcerated or committed to a state hospital is expanded to include those committed to other institutions or facilities. In order to facilitate reentry services, benefits may be restored up to 90 days prior to release for incarcerated or civilly committed persons whose benefits have been suspended and who have a scheduled release date. However, no federal funds may be expended for purposes not permitted by the state's agreements with the federal government. Starting January 1, 2022, benefits must be restored no less than seven days prior to scheduled release.

Medicaid Waiver.

The HCA must, after the release of federal guidance, apply for a section 1115 Medicaid waiver to provide reentry services through the state Medicaid program to persons who are expecting to be released from a public institution and are otherwise eligible to receive medical assistance. The HCA must update the Governor and the Legislature in writing upon submission of its application, final approval or denial of the application, and any other critical junctures at the discretion of the HCA.

In developing its application, the HCA must consult with the reentry services work group created in the bill, and must consider how to best leverage the waiver application for certain specified purposes, including:

- to provide federal funding support for the state-only portions of the Reentry Community Services Program;
- to provide sustainable funding for cost-effective or cost-neutral reentry or diversion services provided by pilot programs funded through the *Trueblood* contempt fines; and
- to accommodate the special needs of persons in jail who tend to stay for short periods of time and do not have access to a documented anticipated release date.

The HCA must also consider how prior Washington State Institute for Public Policy (WSIPP) evaluations of the Reentry Community Services Program may be used to establish an evidence base for the waiver application.

Conditional Release of Persons Committed as Not Guilty by Reason of Insanity.

A behavioral health agency that provides community behavioral health services to a person committed as NGRI who is placed on conditional release must provide equivalent services to the person as it would provide to a person who is civilly committed under the ITA and court ordered to receive LRA treatment. The behavioral health agency must participate in reentry planning when a person is recommended for conditional release and may provide reentry services in coordination with state hospital staff and the person's MCO, BHASO, or private insurance carrier.

Work Group.

The HCA must convene a reentry services work group (work group) to consider ways to improve reentry services for persons with an identified behavioral health services need. The work group must:

- advise the HCA on its section 1115 Medicaid waiver application;
- consider how to expand, replicate, or adapt the essential elements of the Reentry Community Services Program to provide reentry community services to a larger set

- of persons releasing from prison; civilly committed persons who are ready for discharge from a state hospital; persons releasing from Juvenile Rehabilitation; persons releasing from jail; and other populations;
- evaluate whether to retain the administration of contracts for services under the Reentry Community Services Program at the state level or instead shift administration to MCOs or BHASOs;
 - assess the costs and savings that could be realized through expanding or replicating the Reentry Community Services Program or through other means of providing reentry services;
 - evaluate the sustainability of promising reentry services or diversion services provided by pilot programs funded by *Trueblood* contempt fines;
 - recommend means of funding and staffing expanded reentry services; and
 - consider how peer services can be incorporated into reentry services programs.

The HCA must invite participation in the work group by identified agencies and stakeholder groups. The work group must provide a progress report to the Governor and appropriate committees of the Legislature by December 1, 2020, and a final report by December 1, 2021.

Washington State Institute for Public Policy Study.

The WSIPP must update its previous evaluations of the Reentry Community Services Program, considering impacts on both recidivism and the use of public services. The WSIPP must collaborate with the HCA's reentry services work group to determine research parameters and additional research questions that would support the work group including, but not limited to, the potential cost, benefit, and risks to the state of expanding or replicating the Reentry Community Services Program, and what modifications to the program are most and least likely to prove advantageous based on the current state of knowledge about evidence-based, research-based, and promising programs.

The DOC, the HCA, the Administrative Office of the Courts, King County, and the DSHS must cooperate with the WSIPP to facilitate access to data or other necessary resources. A preliminary report to the Governor and the Legislature is due December 1, 2020, and a final report is due November 1, 2021.

Resolution of Untried Criminal Matters Pertaining to Incarcerated Persons.

The process for incarcerated persons to resolve any untried indictment, information, or complaint within 120 days is expanded to apply to persons confined in Juvenile Rehabilitation facilities, and to untried matters in district, municipal, and juvenile courts. Certain time periods are excluded from the 120-day calculation, including time associated with proceedings on unrelated charges in a different county or proceedings related to competency to stand trial on the pending charge, and time during which the person is detained in a federal jail or prison and subject to conditions of release not imposed by the state. The superintendent of the institution in which the person is detained must communicate with the prosecuting attorney or court in the untried matter regarding the person's location and availability for trial. Changes are made to refer to "person" rather than "prisoner" and other changes are made to terminology.

Amended Bill Compared to Engrossed Substitute Bill:

Provisions are added amending the current law process for a person incarcerated in a penal or correctional institution to resolve any untried indictment, information, or complaint pending against the person within 120 days. All provisions of the underlying bill are retained.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 27, 2020.

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) When a person comes out of a correctional institution and successfully reintegrates into society, it helps that person and it reduces recidivism. The recidivism rate associated with the ORCS program is phenomenal, reducing recidivism by at least half though intensive services aimed at the individual. It is the risk-needs-responsivity model at its finest. Savings from other bills should be statutorily dedicated to efforts like this.

(Opposed) None.

Persons Testifying: James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.