

HOUSE BILL REPORT

E2SSB 5071

As Passed House - Amended:

April 11, 2021

Title: An act relating to creating transition teams to assist specified persons under civil commitment.

Brief Description: Creating transition teams to assist specified persons under civil commitment.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Darneille, Das, Hunt, Kuderer, Nguyen and Wilson, C.).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/23/21, 3/26/21 [DPA];

Appropriations: 3/31/21, 4/1/21 [DPA(CRJ)].

Floor Activity:

Passed House: 4/11/21, 70-28.

Brief Summary of Engrossed Second Substitute Bill (As Amended By House)

- Creates transition teams to support the release of persons found not guilty by reason of insanity and certain persons who have been civilly committed following dismissal of a violent felony based on incompetence to stand trial from the state hospitals.
- Extends minimum requirements for less restrictive alternative treatment to persons committed pursuant to criminal insanity laws which are established in law for other committed persons.
- Imposes requirements on the Health Care Authority and behavioral health administrative organizations related to less restrictive alternative treatment orders.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 3 members: Representatives Abbarno, Klippert and Ybarra.

Staff: Ingrid Lewis (786-7289).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Civil Rights & Judiciary. Signed by 22 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Johnson, J., Lekanoff, Pollet, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 4 members: Representatives Corry, Assistant Ranking Minority Member; Boehnke, Caldier and Dye.

Minority Report: Without recommendation. Signed by 7 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Hoff, Jacobsen and Rude.

Staff: Andrew Toulon (786-7178).

Background:

A person may be committed to involuntary treatment for a behavioral health disorder under a variety of circumstances pursuant to civil and forensic commitment statutes.

A forensic system commitment may be for: (1) an evaluation to determine whether or not a person is competent to stand trial; (2) restoration of a person's competency so that the person may stand trial; or (3) as a result of a finding of not guilty by reason of insanity (NGRI).

Not Guilty By Reason of Insanity.

A person is NGRI of a criminal offense if, at the time of the act, as a result of a mental disease or defect, he or she was unable to perceive the nature and quality of the act or unable to tell right from wrong.

A defendant who is found NGRI may be committed to a state hospital if a judge or jury finds that the defendant presents a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, and there is no less restrictive treatment than detention in a state hospital. The term of commitment may not exceed the maximum sentence for the offense for which the defendant was acquitted by reason of insanity.

Competency.

A person is incompetent to stand trial in a criminal case if he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in their own defense. A person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

If a defendant charged with a felony is not restored to competency at the end of the felony competency restoration period, then the court must dismiss the charges without prejudice and refer the defendant to a designated crisis responder for a civil commitment evaluation pursuant to the Involuntary Treatment Act (ITA). A person who has had felony charges dismissed due to incompetency may be committed for a period of up to 180 days if the person presents a substantial likelihood of repeating similar acts as a result of a mental disorder. For crimes that constitute a violent felony as defined in statute, an affirmative special finding may be made that qualifies the person for additional terms of supervision and commitment.

Conditional Release.

A person found NGRI may petition for conditional release once every six months. An application for conditional release, whether initiated by the committed person or the Department of Social and Health Services (DSHS), must be forwarded to the superior court of the county which ordered the person's commitment. The court may reject the recommendation of the DSHS only based on substantial evidence that the person continues to meet the criteria for inpatient treatment. When granting an application for conditional release, a court may require the person to be supervised by a community corrections officer.

A person committed under the ITA where the court has made a special finding that the person committed acts constituting a violent offense may be conditionally released pursuant to a Less Restrictive Alternative (LRA) treatment order.

The LRA treatment for individuals committed under the ITA contains at a minimum:

- assignment of a care coordinator;

- an intake evaluation with the provider of LRA treatment;
- a psychiatric evaluation;
- a schedule of regular contacts with the treatment provider;
- a transition plan addressing access to continued services at the expiration of the order;
- a crisis plan; and
- notification to the care coordinator when the person does not substantially comply with treatment requirements.

No such requirements are applied to the conditional release of persons found NGRI.

Conditional release and LRA orders may be modified or revoked if the court determines that the person is failing to adhere to the terms and conditions of the release or is in need of additional care and treatment.

For both persons found NGRI and persons committed under the ITA where the court has made a special finding, conditional release petitions and the DSHS release recommendations must be forwarded to the Public Safety Review Panel, which is an oversight board that is charged with issuing advisory opinions to the court concerning release recommendations by the DSHS.

Disclosure of Health Information.

The Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or a written authorization by the patient. Some exceptions include: disclosure for the provision of health care; public health and law enforcement activities as required by law; and judicial proceedings.

State Agency Oversight of the Behavioral Health System.

The DSHS oversees inpatient treatment for adults who receive involuntary commitment through the criminal justice and civil system at one of two state hospitals: Western State Hospital; and Eastern State Hospital.

The Health Care Authority (HCA) contracts with behavioral health administrative services organizations (BHASO) and managed care organizations (MCO) to administer certain behavioral health services, including administration of the ITA, for all individuals within a regional service area.

Summary of Amended Bill:

Conditional Release of Persons Found Not Guilty By Reason of Insanity.

For persons found NGRI, conditional release must begin on admission and be facilitated by the state hospital liaison for the person's MCO or BHASO, in collaboration with the DSHS. The person or the DSHS may make a motion for limited conditional release if there is insufficient evidence to support a full conditional release, but the person would benefit from the opportunity to exercise increased privileges and can do so under the supervision of the DSHS without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

The LRA treatment requirements are imposed on the conditional release of persons found NGRI, and minimum requirements for an order of conditional release are increased to include minimum components similar to those applicable to persons ordered to receive LRA treatment.

Multidisciplinary Transition Teams.

For both persons found NGRI and persons committed under the ITA where the court has made a special finding, conditional release and LRA treatment orders must include supervision by a multidisciplinary transition team, including a specially trained community corrections officer and representatives of the DSHS and the community behavioral health agency treatment provider. Representation from a treatment provider may be omitted if the order does not require participation in behavioral health treatment, and the appointment of a community corrections officer may be omitted if the court makes a special finding that appointment would not facilitate the success or safety of the person or the public.

The role of the transition team is to facilitate the success of the person by monitoring progress in treatment and compliance with court-ordered conditions, and problem-solving extra support the person may need or circumstances that may threaten either the person or the public's safety. The team shall meet according to a schedule developed by the team and communicate as needed if issues arise. The HCA shall coordinate with the DSHS to offer contracts to community behavioral health agencies to support non-Medicaid reimbursable costs associated with participating in transition teams. The HCA may establish requirements, provide technical assistance, and provide training as appropriate and within available resources.

The Department of Corrections (DOC) must collaborate with the DSHS to develop specialized training for community corrections officers appointed to a transition team. A conditional release or LRA order must not be delayed due to a lack of availability of a specially trained community corrections officer; another officer may be appointed if necessary.

Disclosure of Health Information.

Disclosure of protected mental health information may be disclosed by a care coordinator assigned to a person ordered to receive LRA treatment for the purpose of sharing information to parties necessary for the implementation of both civil and forensic mental

health proceedings.

Other Provisions.

The BHASOs must provide LRA treatment services to all persons who receive LRA treatment orders who do not have access to health insurance coverage for these services, regardless of whether adequate resources are available to provide the services.

Superior court clerks must share all involuntary commitment hearing outcome information with their local BHASO, which must track information related to LRA treatment orders and ensure the information is distributed to the appropriate MCO if the person is enrolled in Medicaid.

A court may delay a bail hearing for a defendant at first appearance or arraignment if it determines that a competency evaluation will be requested or ordered for the defendant if the charges are pursued.

The HCA must revise its behavioral health data system for tracking involuntary commitment orders to enable users to distinguish between types of orders.

The provisions of this act apply to persons who are committed for inpatient behavioral health treatment when the law comes into effect.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to prior delayed effective dates, which takes effect July 1, 2026; and sections 12 and 14, relating to prior delayed effective dates, which take effect July 1, 2022.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) This bill is based on recommendations made by the Public Safety Review Panel and will impact patients who are trying to overcome the effects of a severe mental illness, have gone through treatment at the state hospital, and present themselves as safe members of society.

These populations have engaged in similar acts and have similar mental health issues, but current law doesn't provide the same resources for conditional release, which is an equity and fairness concern. The bill is an attempt to streamline the discharge process in an efficient and effective manner for persons committed at Western and Eastern State Hospitals. Discharge is inconsistent because of poor planning and a lack of monitoring

services. These shortcomings affect the success of the patient in the community as well as the public safety.

Minimum resource requirements are established by providing increased support consisting of multidisciplinary transition teams made up of both treatment and supervision professionals. The ability to utilize LRA treatment options would allow patients to live in their local communities so that they can remain close to family and friends who are fundamental to their support system.

It costs the state \$1100-\$1200 per day for inpatient treatment and moving patients out of the hospital and into safe and successful conditional release environments is a cost savings.

(Opposed) This bill requires all forensic patients found eligible for conditional release and certain civil patients to be supervised by the DOC unless the court makes a special finding. This deepens investment and reliance on the criminal legal system at a time when the country is reevaluating the efficacy of that system. The bill also creates a new classification of specially trained community corrections officers when what is needed is behavioral health professionals in these roles. The transition team members need to have the skills needed to successfully support individuals. Corrections officers do not play a constructive role on the team. The presumption that a community corrections officer is on the team unless a court makes a special finding should be reversed.

Reporting to the DOC is humiliating. It is a frightening place to report, and it is a normal part of life for people who consciously and intentionally choose to commit felonies. It is not a normal place for people who have mental health issues that cause them to enter the criminal justice system.

(Other) Funding and robust provision of external providers in the community who are capable of supporting patients who have committed violent crimes needs to be provided. There needs to be a clear understanding of who is monitoring the individual on the transition team.

Staff Summary of Public Testimony (Appropriations):

(In support) The primary barriers to safe conditional release of state hospital patients are poor planning and a lack of monitoring resources. This bill solves both problems and addresses constitutional requirements placed on the state to allow for the option of conditional release. The bill establishes minimum resource requirements for conditional release. It provides increased support through multidisciplinary transition teams made up of treatment and supervision professionals. It makes the same resources available to individuals who are on either conditional release or less restrictive alternative orders. The result of this bill will be increased patient success, improved public safety, and reduced delays surrounding release, which will ultimately save money.

The state spends over \$400,000 per year to keep a patient in the hospital. If people do not receive training regarding mental health issues, then the conditions are stigmatized and go unaddressed. Training corrections officers is appropriate as more people have mental health issues in the criminal legal system than do not. This is a better approach than spending money in the capital budget to build a new mental health hospital.

(Opposed) While there should be robust support to transition people out of hospitals, funding should not be spent on training community corrections officers. Data shows that individuals supervised by the corrections special needs unit results in higher incidences of individuals being rearrested for violations related to behavioral health. The state should not be investing in the criminal legal system, which does harm to marginalized communities, to address health care issues.

Persons Testifying (Civil Rights & Judiciary): (In support) Senator Manka Dhingra, prime sponsor; Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Shawna Dixon; and David Hackett, Public Safety Review Panel.

(Opposed) Darya Farivar, Disability Rights Washington; and Joshua Stuller.

(Other) Wendi Wachsmuth.

Persons Testifying (Appropriations): (In support) David Hackett, Public Safety Review Panel; and Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Opposed) Darya Farivar, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

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