

HOUSE BILL REPORT

ESSB 5690

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to conditional release transition teams.

Brief Description: Concerning conditional release transition teams.

Sponsors: Senate Committee on Human Services (originally sponsored by Senators Dhingra, Nobles, Saldaña and Wilson, C.; by request of Department of Corrections).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/14/24, 2/16/24 [DPA].

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

- Provides that conditional release of a person civilly committed after an acquittal by reason of insanity includes partial conditional release where the person remains in an inpatient setting and conditional release to a less restrictive alternative (LRA) in the community.
- Provides that the Department of Corrections may submit information to the Department of Social and Health Services as to proposed terms and conditions for cases considered for unescorted access to the community or conditional release to an LRA for which they have court-ordered supervision.
- Provides that LRA treatment under a conditional release order must "address" specified minimum services, rather than "include" the specified minimum services.
- Provides that the care coordinator for a person under an LRA order must collaborate with the transition team in developing an individualized treatment plan for the person, and that the transition team must maintain an ongoing therapeutic relationship with the person.

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 6 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Abbarno and Cheney.

Staff: Edie Adams (786-7180).

Background:

Not Guilty by Reason of Insanity.

A criminal defendant is not guilty by reason of insanity (NGRI) if a judge or jury finds that, at the time of the commission of the offense, and as a result of a mental disease or defect, the defendant was either unable to perceive the nature or the quality of the act charged or was unable to tell right from wrong with reference to the particular act charged.

Civil Commitment Following Acquittal By Reason of Insanity.

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 a substantial danger 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. If the court finds the person is not a substantial danger to other persons and does not pose a substantial likelihood of committing criminal acts jeopardizing public safety, but that the person is in need of control by the court or other persons or institutions, the court must direct the person's conditional release.

Conditional Release.

A person found NGRI may not be released from the state hospital before the expiration of the person's term of commitment unless ordered by the superior court in the county in which the person was committed. A person may petition for conditional release once every six months. The Department of Social and Health Services (Department) must submit this petition to the court with its recommendation concerning the release. The Department may on its own initiate a recommendation to the court that a person be conditionally released. The Department's recommendation must include the terms and conditions under which the Department believes the person can be conditionally released.

The court must schedule a hearing within 30 days of receipt of the application or recommendation for conditional release. The court must determine whether the person may be released conditionally to less restrictive alternative (LRA) treatment under supervision of a multidisciplinary transition team and conditions ordered by the court without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing

public safety or security. The court may reject the recommendation of the Department only based on substantial evidence.

Limited Conditional Release.

The Department or a person found NGRI may make a motion for limited conditional release if there is insufficient evidence that the person may be conditionally released to LRA treatment, but the person would benefit from an opportunity to exercise increased privileges while remaining under the custody and supervision of the Department without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

Conditional Release to Less Restrictive Alternative Treatment.

An order for conditional release of a person to less restrictive alternative (LRA) treatment must include supervision by a multidisciplinary transition team that includes a specially trained community corrections officer, a Department representative, and if behavioral health treatment is required, a representative of the community behavioral health agency providing LRA treatment. The role of the transition team is to facilitate the person's success by monitoring the person's progress in treatment and compliance with court-ordered conditions, and to problem solve extra support the person may need. A conditional release order must also include a requirement that the person comply with conditions of supervision that include: reporting to a transition team member, remaining within prescribed geographical boundaries, and notifying the transition team before making any change in employment or address.

Less restrictive alternative treatment under a conditional release order must include the following minimum services and may include other specified services:

- assignment of a care coordinator;
- an intake evaluation with the provider of LRA treatment;
- a psychiatric evaluation and/or substance use disorder evaluation;
- a schedule of regular contacts with the treatment provider;
- a transition plan addressing access to continued services at the expiration of the order;
- an individual crisis plan;
- consultation about the formation of a mental health advance directive;
- appointment of a transition team; and
- notification to the care coordinator and the transition team when the person does not substantially comply with treatment requirements.

The care coordinator is a representative from the Department who coordinates activities with the person's transition team that are necessary for enforcement and continuation of the conditional release order. The care coordinator is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

The care coordinator must submit an individualized plan for the person's treatment services

to the court. The initial plan must be submitted as soon as possible after the intake evaluation and a revised plan must be submitted any time there is a modification that removes or adds a service to the treatment plan.

When a conditionally released person is required to report to a physician, community corrections officer, or medical or mental health practitioner, the physician, officer, or practitioner must submit a periodic report stating whether the person is adhering to terms and conditions and detailing any criminal arrests or charges and any significant change in the person's mental health condition or other circumstances. The report must be submitted to the court, the Department, the institution from which the person was released, and the county prosecutor.

Public Safety Review Panel.

A Public Safety Review Panel (Panel) was established in 2010 to independently review and assess the Department's proposals for release or conditional release, furlough, or temporary leave for NGRI cases. The Panel provides written determinations of the public safety risk presented by any release or conditional release recommendation and may offer alternative recommendations. The Panel's recommendations are submitted to the court with the recommendations of the Department and are provided to the prosecutor and counsel for the committed person.

Summary of Amended Bill:

The definition of conditional release is updated to specify that it means either: partial conditional release where a patient continues inpatient at a Department institution or facility designated to provide treatment to persons acquitted by reason of insanity; or conditional release to a less restrictive setting that meets minimum statutory requirements and where the person resides in the community. Provisions are modified to distinguish partial conditional release from conditional release to an LRA. References to "limited conditional release" are changed to "partial conditional release."

Any recommendation by the Department for a person's conditional release must specify the terms and conditions for either a partial conditional release or terms and conditions that meet statutory minimum requirements for conditional release to LRA treatment. The Department of Corrections (DOC) may provide information to the Department as to proposed terms and conditions for cases considered for unescorted access to the community or conditional release to an LRA and for which they have court-ordered supervision.

At the hearing on the conditional release petition, the court must determine whether or not the person may be conditionally released under conditions imposed by the court without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security. The court may not order conditional release to a proposed LRA unless the conditions ensure that the conditional release will satisfy the

minimum statutory requirements for LRA treatment.

The requirement that LRA treatment under a conditional release order must include specified minimum services is revised to instead provide that LRA treatment under a conditional release order must address the specified minimum services.

The care coordinator for a person ordered to LRA treatment under a conditional release order must collaborate with the transition team in developing the person's individualized treatment plan. The transition team, rather than the care coordinator, is required to establish and maintain a therapeutic relationship with the individual on a continuing basis.

Reports required of supervising physicians, community corrections officers, or medical or mental health practitioners apply with respect to persons conditionally released to an LRA. The reports may be combined for members of a transition team and submitted by a designated member unless otherwise designated by the court.

A reference to "state hospital" is changed to instead refer to a Department institution or facility designated to provide treatment for persons acquitted by reason of insanity.

Amended Bill Compared to Engrossed Substitute Bill:

The bill as amended makes the following changes:

- removes the provision requiring a court to consider the recommendations of the community corrections officer and the Public Safety Review Panel before ordering conditional release to an LRA, and instead provides that the DOC may provide information to the Department as to proposed terms and conditions for cases considered for unescorted access to the community or conditional release to an LRA and for which they have court-ordered supervision;
- removes language providing that a facility's recommendation for partial conditional release that allows unsupervised community access must be informed by advisement of a community corrections officer, and that a person on partial conditional release must be under the continued supervision of the Department;
- provides that LRA treatment under a conditional release order must "address" specified minimum services, rather than "include" the specified minimum services;
- clarifies that reporting requirements apply only with respect to persons conditionally released to an LRA; and
- replaces a reference to "state hospital" with a Department institution or facility designated to provide treatment for persons acquitted by reason of insanity.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 9, 2024.

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) The bill is a follow-up to legislation passed in 2021 that created transition teams to assist civilly committed individuals transitioning to the community. The bill distinguishes between partial conditional release where a person is given privileges on the grounds, and conditional release to an LRA in the community. The bill will help ensure that transition teams provide oversight and assistance to help people be successful when they transition from inpatient to outpatient.

The bill is a technical fix to allow the DOC to participate in pre-transition planning for individuals who are being conditionally released. The 2021 legislation only allowed the DOC to participate when the individual had already been released from the inpatient setting, but not in the pre-transition process. This bill fixes that oversight by allowing the DOC to have involvement in pre-transition planning as well as continued participation during and after transition. The bill does not expand the power of the DOC nor does it give the DOC the authority to determine release.

There are some concerns that language in the bill will allow those without clinical involvement in a case to have a say in privilege recommendations in the conditional release process. There is proposed amendatory language that would address that while still allowing input from the DOC where appropriate.

(Opposed) None.

(Other) There is some concern with language in the bill relating to the DOC's recommendations on conditional release. The bill should be amended to clarify that the DOC is making recommendations as to proposed conditions of release, rather than making a decision on whether someone should or should not be released. The proposed amendments are in line with everyone's intent and will provide more clarity for courts and attorneys.

Persons Testifying: (In support) Senator Manka Dhingra, prime sponsor; Mac Pevey, Washington State Department of Corrections; and Kevin Bovenkamp, Washington State Department of Social and Health Services.

(Other) Jennifer Bartlett, Washington State Office of Public Defense.

Persons Signed In To Testify But Not Testifying: None.