

SENATE BILL REPORT

ESSB 5690

As Amended by House, February 27, 2024

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: Human Services: 2/13/23, 2/14/23 [DPS-WM].
Ways & Means: 2/20/23 [w/oRec].

Floor Activity: Passed Senate: 1/24/24, 49-0.
Passed House: 2/27/24, 59-36; 2/27/24, 58-37.

Brief Summary of Engrossed First Substitute Bill

- Expands the definition of conditional release to include partial conditional release and conditional release to a less restrictive alternative (LRA) for persons civilly committed pursuant to criminal insanity laws.
- Requires the court to consider the recommendations of community corrections officers and the Independent Public Safety Review Panel before ordering conditional release to a proposed LRA.
- Requires a recommendation for partial conditional release to be informed by advisement of a community corrections officer.
- Specifies that care coordinators must submit an individualized treatment plan to the court in collaboration with and on behalf of a transition team.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 5690 be substituted therefor, and the

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substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Boehnke, Ranking Member; Frame, Nguyen, Warnick and Wilson, J..

Staff: Kelsey-anne Fung (786-7479)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Monica Fontaine (786-7341)

Background: Not Guilty By Reason of Insanity. A person is not guilty by reason of insanity (NGRI) of a criminal offense if, at the time of the act, as a result of a mental disease or defect, the person 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.

Conditional Release to Less Restrictive Alternative Treatment in the Community. 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 secretary of 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 must schedule a hearing within 30 days of receiving an application or recommendation for conditional release with the secretary's recommendation. The issue to be determined at the hearing is whether or not the person may be conditionally released to less restrictive alternative (LRA) treatment under the supervision of a multidisciplinary transition team 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 deny conditional release to a less restrictive alternative only on the basis of substantial evidence. If the court orders conditional release, a court must require the person to be supervised by a multidisciplinary transition team.

Limited Conditional Release. DSHS or a person found NGRI 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 while under the supervision of the DSHS without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

Multidisciplinary Transition Teams. Orders for conditional release to LRA treatment must include supervision by a multidisciplinary transition team, including a specially trained Department of Corrections (DOC) community corrections officer, a DSHS representative, and a representative of 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 community.

The role of the transition team is to facilitate the success of the person on conditional release 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 community's safety. The team must meet according to a schedule developed by the team and communicate as needed if issues arise.

DOC must collaborate with DSHS to develop specialized training for community corrections officers appointed to a transition team. A conditional release order must not be delayed due to the lack of a specially trained community corrections officer. Another community corrections officer may be appointed if no specially trained officer is available.

For a conditionally released person required to report to a physician, DOC community corrections officer, or medical or mental health practitioner on a regular basis, reports must be submitted by the physician, officer, or practitioner monthly for the first six months after release and then semiannually. The report must state whether the person is adhering to the terms of the conditional release, including any arrests, criminal charges filed, and any significant change in the person's mental condition or other circumstances.

Less Restrictive Alternative Treatment. LRA treatment pursuant to a conditional release order includes at a minimum:

- assignment of a care coordinator;
- an intake evaluation with the LRA treatment provider;
- a psychiatric evaluation or a substance use disorder evaluation, or both;
- a schedule of regular contacts with the LRA treatment provider for the duration of the order;
- a transition plan addressing access to continued services at the expiration of the order;
- an individualized crisis plan;
- consultation about the formation of a mental health advance directive;

- appointment of a transition team; and
- notification to the care coordinator and transition team when the person does not substantially comply with treatment requirements.

LRA treatment may also include requirements to participate in the following services:

- medication management;
- psychotherapy;
- nursing;
- substance use disorder counseling;
- residential treatment;
- partial hospitalization;
- intensive outpatient treatment;
- support for housing, benefits, education, and employment; and
- periodic court review.

There are no restrictions prohibiting the services from beginning before the conditional release of the individual.

Care Coordinator. The care coordinator is a DSHS representative who coordinates the activities of LRA treatment pursuant to a conditional release order. The care coordinator coordinates activities with the person's transition team that are necessary for the enforcement and continuation of the conditional release order, and coordinates with other agencies to establish and maintain a therapeutic relationship with the individual.

The care coordinator must submit an individualized treatment plan to the court for the person ordered to LRA treatment. An initial plan must be submitted as soon as possible after the intake evaluation and a revised plan must be submitted upon any subsequent modification where a service is removed or added to the treatment plan.

Independent Public Safety Review Panel. In 2010, the Independent Public Safety Review Panel was created to provide advice to the secretary of DSHS and courts concerning persons committed to state hospitals as criminally insane or committed under the involuntary treatment act. The panel is charged with reviewing and assessing the public safety risk entailed by the secretary's proposed conditional release recommendation or release recommendation. This includes a change in commitment status, allowing furloughs or temporary leaves accompanied by staff, not seeking further commitment, and permitting movement about the grounds of the treatment facility with or without the accompaniment of staff. The panel consists of seven members representing different affiliations appointed by the Governor for renewable three-year terms.

Summary of Engrossed First Substitute Bill: The definition of conditional release is expanded to include either partial conditional release, where the person continues inpatient at a state hospital, or conditional release to a less restrictive setting in the community that meets minimum statutory requirements. Requirements are modified and clarified that

distinguish partial conditional release from conditional release to a LRA in the community as two separate options.

Before ordering conditional release to a proposed LRA, the court must consider the report and recommendations of the community corrections officer, and the recommendations of the Independent Public Safety Review Panel. The court may not order conditional release to a proposed LRA unless it meets minimum statutory requirements.

The issue for the court to determine at a conditional hearing is changed to 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.

If the order for conditional release provides for partial conditional release, the person must continue to be under the supervision of the secretary of DSHS. The facility recommendation to the secretary of DSHS for review of partial conditional release that allows unsupervised community access off the grounds of the state hospital will be informed by the advisement of a community corrections officer.

The existing authorization in statute for limited conditional release is renamed to partial conditional release, where the person would benefit from the opportunity to exercise increased privileges while remaining under the custody and supervision of DSHS without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

The care coordinator for a person conditionally release to an LRA must submit an individualized plan for the person's treatment in the court in collaboration with and on behalf of the transition team.

Reports from the transition team members may be consolidated and submitted by a designated member of the transition team, unless otherwise directed by the court.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 28, 2024.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services): *The committee recommended a different version of the bill than what was heard.* PRO: The bill is a technical cleanup to 2021 legislation. It clarifies definitions that will align DSHS' practices with the court order for partial conditional release. Partial conditional release is when the

person found not guilty by reason of insanity is a patient of the state hospital and under DSHS custody, but is allowed privileges around the grounds of the state hospital. Conditional release to an LRA is when the person is on supervision in the community.

The bill also makes sure DOC's recommendations for conditional release are delivered to the court at an appropriate time for the court to consider. It allows DOC to participate in pretransition planning, and allows DOC to continue to participate during and after the person's transition to provide for safe and sustained transitions to the community. Under the 2021 legislation, DOC was only identified to participate on the person's transition team after the person was already released from inpatient to the community, and DOC did not have a role in the pretransition partial conditional release process. This bill allows DOC to engage with individuals when appropriate during the partial conditional release process, communicate with treatment facilities about an individual's treatment, and discuss risk factors to make the best plan for the person to be successful. It also allows DOC to serve as a resource for state hospitals to identify and recommend interventions.

Persons Testifying (Human Services): PRO: Senator Manka Dhingra, Prime Sponsor; Mac Pevey, Washington State Department of Corrections; Kevin Bovenkamp, Washington State Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying (Human Services): No one.

Staff Summary of Public Testimony (Ways & Means): No public hearing was held.

Persons Testifying (Ways & Means): N/A

Persons Signed In To Testify But Not Testifying (Ways & Means): N/A

EFFECT OF HOUSE AMENDMENT(S):

- Replaces a reference to state hospital with a department institution or facility designated to provide treatment for persons acquitted as not guilty by reason of insanity.
- Authorizes DOC to provide information to DSHS as to the proposed terms and conditions for cases considered for partial conditional release or conditional release to a LRA for which they have court-ordered supervision.
- Removes the requirement for a person on partial conditional release to be under the continued supervision of DSHS.
- Removes language providing that the facility recommendation for review of partial conditional release that allows unsupervised community access will be informed by advisement of a community corrections officer.
- Removes the requirement for the court, before ordering conditional release to a proposed LRA, to consider the recommendations of the community corrections officer and the Independent Public Safety Review Panel.
- Specifies that LRA treatment must address, rather than include, specified services.
- Clarifies that the required reports from a physician, community corrections officer, or

medical or mental health practitioner apply only to persons conditionally released to a LRA.