

# HOUSE BILL REPORT

## HB 2078

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**As Reported by House Committee On:**  
Human Services  
Health & Human Services Appropriations

**Title:** An act relating to persons with developmental disabilities who are in correctional facilities or jails.

**Brief Description:** Concerning persons with developmental disabilities who are in correctional facilities or jails.

**Sponsors:** Representatives Roberts, O'Brien, Walsh, Jacks, Appleton, Goodman, Dickerson, Green, Kagi, Chase, Wood, Kenney and Haler.

**Brief History:**

**Committee Activity:**

Human Services: 2/16/09, 2/19/09 [DPS];

Health & Human Services Appropriations: 2/25/09, 2/26/09 [DP2S(w/o sub HS)].

**Brief Summary of Second Substitute Bill**

- Requires the Developmental Disabilities Council and the Washington Association of Sheriffs and Police Chiefs, in consultation with others to develop (1) a tool to identify persons with developmental disabilities who are booked in jail, and (2) recommendations on the services for persons with developmental disabilities who may become involved in the criminal justice system.
- Directs local jails to begin using this tool by July 1, 2011.

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### HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

**Staff:** Linda Merelle (786-7092)

**Background:**

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*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.*

In 2006 a 41-year-old man with developmental disabilities was booked into a county jail pursuant to a 911 call for misdemeanor assault. The person who called 911 was the man's mother, and the alleged assault was treated as a domestic violence matter. Thus, the responding officers were required to take the person considered to be the aggressor to jail. The man had the physical abilities of an adult, but had not developed mentally beyond a child-like stage. He was in jail for approximately two weeks and released. Several hours after his release, he was returned to jail because his mother again called 911. He was released seven days later, having spent a total of 22 days in jail in solitary confinement. While in jail, the man refused food and water, and his physical and mental health deteriorated significantly.

#### Eligibility for Services.

A person who has been assessed as being eligible for services provided by the Division of Developmental Disabilities (Division) is eligible for both state assistance and federal medical assistance. Medical assistance benefits allow for medical care as provided under Title XIX of the federal Social Security Act. If an eligible person is booked into a correctional facility, he or she does not receive state-funded services while in custody, and the person is no longer eligible for medical assistance.

In 2008 a work group convened to examine the feasibility of expediting the eligibility reinstatement process for individuals who were receiving medical assistance at the time of incarceration. In January 2009 the Department of Social and Health Services released a report to the Legislature in which it proposed a five-phase model for promptly reinstating the eligibility for any person who was receiving medical assistance at the time of incarceration.

#### Training for Law Enforcement Personnel.

In 2003 the Legislature required the Criminal Justice Training Commission to develop a training session on law enforcement interaction with persons who suffer from mental illness and who have developmental disabilities. At the minimum, the training was required to address the following:

- the cause and nature of mental illnesses and developmental disabilities;
- how to identify indicators of mental illness and developmental disabilities;
- how to respond appropriately in common situations;
- conflict resolution and de-escalation techniques for potentially dangerous situations involving persons with mental illness or developmental disabilities;
- appropriate language use;
- alternatives to lethal force; and
- community and state resources available to persons who have a mental illness or developmental disabilities.

The statute passed by the Legislature in 2003 did not include a requirement for training to personnel for city and county jail facilities.

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#### **Summary of Substitute Bill:**

### Eligibility for Division of Developmental Disability Services.

A person who is booked into a correctional facility would remain eligible for services provided by the Division of Developmental Disabilities (Division). Prior to the person's release from custody or upon his or her release, the person shall be assessed by the Division to determine whether a change in the level of support is necessary.

### Reinstatement of Medical Assistance.

The Department of Social and Health Services (Department) must adopt rules and policies which provide that if a person with developmental disabilities is enrolled in medical assistance at the time of incarceration, the medical assistance coverage will be fully reinstated on the day of release, subject to any expedited review of continued eligibility required under federal or state law.

The Department, in collaboration with the Washington Association of Sheriffs and Police Chiefs, the Department of Corrections (DOC), and local jail personnel must establish procedures for coordinating local offices of the Department, correctional institutions, and local jails to ensure prompt reinstatement of eligibility or special eligibility determination for persons likely to be eligible for medical assistance upon release from confinement.

### Screening Tool to Identify Persons with Developmental Disabilities.

The Developmental Disabilities Council (DDC) is directed to contract for the development and implementation by July 1, 2010 of a screening tool to identify persons booked into jail who have a developmental disability. Once a person with a developmental disability is identified, jail or correctional staff must contact the local office of the Department and request whether the person is already a client. The Department must respond within 24 hours. If the person is not already a client, and the Department has not previously determined that the person is ineligible, the Department must, within 48 hours, perform an in-person eligibility determination.

### Reasonable Accommodations.

Once a person with a developmental disability is identified, jail or correctional staff must determine reasonable accommodations required for the person while in jail. If the person is eligible for services by the Division, the jail or correctional staff shall consult with the Division in determining what accommodations are necessary.

The DDC is directed, in consultation with the DOC, Department, representatives of local jails, representatives of the state-designated protection and advocacy system and other advocates, to develop short and concise training tools for correctional and jail staff regarding offenders with developmental disabilities.

### **Substitute Bill Compared to Original Bill:**

The language of the intent section is consolidated into one section rather than the two sections contained in the original bill. The Department is not required to adopt rules and

policies to allow the reinstatement of medical assistance coverage for a person with developmental disabilities upon his or her release from incarceration. The Department is no longer required to work with the Washington Association of Sheriffs and Police Chiefs, the DOC, and local jail personnel to establish procedures for prompt reinstatement of medical assistance when a person with developmental disabilities is released from incarceration. The DDC is no longer required to consult the DOC, jail representatives, and other stakeholders to develop a transition program for clients being released from incarceration into the community.

The substitute bill removes the jail staff's discretion to use the screening tool developed by the DDC to identify persons with developmental disabilities. Under the substitute bill, the jail staff must use the tool developed by the DDC.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 16, 2009.

**Effective Date of Substitute 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 meat of the bill is that we are looking for a better understanding of who, when they come into an incarceration setting, has a developmental disability. Through this screening, we want to assure that the individual understands what is happening to him and what is expected of him. We are looking for some screening tools, training of staff, and a better understanding. Jail staff sometimes do not understand how to work with persons with developmental disabilities. It is also important to address whether the goal of keeping the community safer is going to be met by keeping a person with developmental disabilities in jail or prison, or do we need to find alternatives. This allows us to at least be a little more cautious in how we handle these individuals. This bill provides for staff support and a bridge to the community. It will help address the ability of a person with a developmental disability to understand the environment they are in. With this bill, we tried to figure out simple, basic steps to improve the situation for a person in jail with developmental disabilities. Most important is to create a screening tool that a jail guard or other staff who are working with the person may use.

(Neutral) The Division of Developmental Disabilities has a rule that they will review eligibility when there is a request for paid services. A person was in custody for three extra years because eligibility was reviewed just prior to release. This bill will fix that.

(Opposed) None.

**Persons Testifying:** (In support) Representative Roberts, prime sponsor; Melody Oxley; Beki Hissam, Benton-Franklin Parent Coalition; Ed Holen, Developmental Disabilities

Council; Robert Warden; Patty Gee, Autism Society of Washington; and David Lord, Disability Rights Washington.

(Neutral) Todd Carlisle, Northwest Justice Project.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Human Services. Signed by 15 members: Representatives Pettigrew, Chair; Seaquist, Vice Chair; Schmick, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Appleton, Cody, Dickerson, Ericksen, Johnson, Miloscia, Morrell, O'Brien, Roberts, Walsh and Wood.

**Staff:** Trista Zugel (786-7157)

### **Summary of Recommendation of Committee On Health & Human Services Appropriations Compared to Recommendation of Committee On Human Services:**

The second substitute bill requires a workgroup, consisting of the Developmental Disabilities Council and the Washington Association of Sheriffs and Police Chiefs, in consultation with the Department of Corrections, the Department of Social and Health Services, Disability Rights Washington, consumer advocates, and other interested organizations to develop a tool to identify persons with developmental disabilities who are booked in jail. Further, the same group is to consider several options for local jails, the judicial system and the Department of Social and Health Services, to improve outcomes for developmentally disabled offenders. The second substitute bill eliminates the following requirements: that a previously eligible client of the Division of Developmental Disabilities who has been incarcerated would remain eligible upon release; that the Department of Social and Health Services adopt rules and policies to provide for the full reinstatement of medical assistance coverage; and that correctional facilities ensure reasonable accommodations for developmentally disabled offenders while incarcerated.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Second Substitute 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) Key factors that need to be addressed are the need for a screening tool so that jails can identify developmentally disabled individuals when they are booked into jails, and the need to make any training easily accessible, brief, and inexpensive.

(With concerns) There are concerns about how the process will work. The substitute bill appears to be less clear in that it removes the rulemaking authority for the agency. As a result the correctional facilities are unclear about how they would work to interact with the agency when they release a developmentally disabled offender. It is important to have the tool administered at the right time during the process of admitting someone into a jail facility. Booking areas are inappropriate areas for this type of interview. Also, the correctional facilities would need to be included in the development of a screening tool if they were required to use it. There are concerns about unfunded increases in services.

(Opposed) None.

**Persons Testifying:** (In support) Representative Roberts, prime sponsor; Ed Holen, Developmental Disabilities Council; David Lord, Disability Rights Washington; Richard Bishop, Clark County Sherrifs Office; and Dianna Stadden, Arc of Washington.

(With concerns) Linda Rolfe, Division of Developmental Disabilities; and Joanna Arlow, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.