

SENATE BILL REPORT

SHB 1300

As of March 24, 2009

Title: An act relating to access to information on mental health services received by persons who have been committed for custody or supervision or who have been civilly committed after being found incompetent to stand trial for a felony.

Brief Description: Accessing mental health information.

Sponsors: House Committee on Human Services (originally sponsored by Representatives Hurst, Dickerson, Pearson, Klippert, O'Brien and Smith).

Brief History: Passed House: 3/09/09, 97-0.

Committee Activity: Human Services & Corrections: 3/24/09.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Kevin Black (786-7747)

Background: As a general rule, a facility which provides mental health treatment services to an individual may not disclose the fact of admission or any information or records relating to the individual without a signed release, unless an exception is applicable.

State law contains exceptions to the confidentiality rule which allow mental health treatment information to be shared with law enforcement officers, public health officers, and staff of the Department of Corrections (DOC) and the Indeterminate Sentence Review Board (ISRB). These exceptions are contained in three different sections of chapter 71.05 RCW. In each section of the law, disclosure of information is subject to restrictions on the use of the information and the type of information which is available. These restrictions are sometimes inconsistent. Information generally may only be obtained without consent in relation to someone who is an offender and for the purposes of supervision, risk assessment, or presentence investigation, and during certain emergency situations.

A work group was formed in 2008 to examine safety issues related to the supervision of offenders with mental illnesses, in response to the slaying of Shannon Harps in Seattle on December 31, 2007. The work group found that communication across systems is a significant problem for professionals who deal with offenders with mentally illness. Many professionals are prohibited from communicating with each other due to confidentiality laws. In other instances, when communication would be legally permitted, information is not

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shared because there is a perception of a prohibition of sharing information. The complexity of confidentiality rules, and the manner in which they are dispersed throughout the code, makes determination of what kinds of records and information may be shared laborious and complicated.

Summary of Bill: Exceptions to the confidentiality of mental health treatment information which apply to requests by law enforcement, DOC personnel, and the ISRB are consolidated in a new section of 71.05 RCW. These exceptions are expanded in the scope of who may request and receive such information, and which offenders are subject to having their information shared without their permission.

Information may be shared about an offender who is currently under the supervision of DOC or the ISRB; who has been previously convicted, found not guilty by reason of insanity, or incompetent to stand trial for a serious violent offense; or who has been civilly committed following dismissal of a felony because the individual was incompetent to stand trial.

Information may be shared with law enforcement officers, personnel from DOC, the ISRB, a city or county jail, public health officers, prosecuting attorneys, an attorney for the individual, or a court when the information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting party's office. All requests for information must be in writing, except that DOC or law enforcement may make an oral request in an emergency situation which must be subsequently confirmed in writing. For prosecuting attorneys, the purpose for requesting the information is limited to determining what criminal charges to file, if any, and for determining an appropriate bail amount. Any information about an offender's mental health treatment which is provided in support of a request for bail must be provided under seal, and discussed in a closed court hearing.

The legislation does not limit the scope of the mental health information which may be released; however, the Department of Social and Health Services is instructed to develop a standard form for requests of information and a standard format for providing information which limits the information disclosed to the minimum necessary to serve the purpose for which the information is requested.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The work group that examined this issue did great work. This bill is not very expensive, but will have a great impact on public safety. The ability to share information can save the lives and health of potential victims. Sharing information can also help the offender, who without intervention may become incarcerated for the rest of that offender's life or come to harm. Because of this, this is a prevention bill, and should save money. This is a tough area, because individual rights can be in conflict with safety concerns, but disparate groups have been able to come together, including civil

rights groups, and changes have been made to resolve concerns. What is left is narrowly tailored to protect the community and the individual at the same time.

Persons Testifying: PRO: Representative Hurst, prime sponsor; Ethan Rogers, King County Prosecutor's Office.