

# SENATE BILL REPORT

## ESB 6610

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As Passed Senate, February 13, 2010

**Title:** An act relating to improving procedures relating to the commitment of persons found not guilty by reason of insanity.

**Brief Description:** Improving procedures relating to the commitment of persons found not guilty by reason of insanity.

**Sponsors:** Senators Hargrove and McAuliffe; by request of Governor Gregoire.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/15/10, 2/03/10 [DPS, w/oRec].  
Ways & Means: 2/05/10, 2/08/10 [DPS(HSC), w/oRec].  
Passed Senate: 2/13/10, 45-0.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** That Substitute Senate Bill No. 6610 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Kauffman and McAuliffe.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Brandland and Carrell.

**Staff:** Kevin Black (786-7747)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 6610 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Tom, Vice Chair, Operating Budget; Fairley, Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pflug, Pridemore, Regala and Rockefeller.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Honeyford, Parlette and Schoesler.

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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.*

**Staff:** Tim Yowell (786-7435)

**Background:** A 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, as a result of a mental disease or defect, the mind of the defendant was affected to the extent that the defendant was unable to perceive the nature and quality of the act with which the defendant is charged, or the defendant was unable to tell right from wrong with respect to the particular act charged. A defendant who is found NGRI may be committed for treatment at one of Washington's two state hospitals 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. The term of commitment may not exceed the maximum sentence for the offense for which the defendant was acquitted by reason of insanity.

A defendant is not competent to stand trial when, as a result of a mental disease or defect, the defendant lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense.

There are currently 186 persons found NGRI confined in the state hospitals: 117 at Western State Hospital, and 69 at Eastern State Hospital. Approximately 27 percent of these individuals were found NGRI for a homicide offense, 34 percent for a combination of offenses including some degree of assault, and the remainder for other offenses. According to the Division of Behavioral Health and Recovery (DBHR), an average of 20 new defendants are found NGRI each year. Data from DBHR indicates that an average of 16 to 24 persons found NGRI per year are granted a conditional release or final release from custody.

A person found NGRI may not be released from the state hospital before the expiration of the person's term of commitment without leave of the superior court in the county in which the person was committed. A person found NGRI may petition for conditional release or final release once every six months. The Department of Social and Health Services (DSHS) must submit this petition to the court with its recommendation concerning the release. The court must then determine whether the patient may be released conditionally without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. The court may only reject the recommendation of DSHS based on substantial evidence.

**Summary of Engrossed Bill:** An independent public safety review panel is established to review DSHS's proposals for conditional release, furlough, temporary leaves, or movement around the grounds concerning persons found NGRI. The panel must consist of seven members appointed by the Governor, including a psychiatrist, a psychologist, a representative of the Department of Corrections (DOC), a prosecutor, a law enforcement representative, and a consumer and family advocate representative. The panel must complete an independent assessment and provide a written determination of the public safety risk presented by any conditional release recommended by DSHS, and may provide an alternative recommendation. The panel's recommendation must be submitted to the court with the DSHS assessment.

If DSHS determines that a person committed as NGRI presents an unreasonable safety risk which, based on behavior and clinical history, is not manageable in a state hospital setting, the secretary may arrange for the placement of the person in any facility operated by DSHS or the DOC, provided that appropriate mental health treatment is provided to the person and the person is afforded all of his or her procedural rights. Such a person remains under the legal custody of DSHS.

Any change in the mental health of a person found NGRI who has been conditionally released which may cause the person to become a danger to public safety must be reported to the court. Periodic supervision reports regarding a person found NGRI on conditional release must include information about all arrests, new criminal charges filed, or changes in mental health status.

The court must schedule a revocation hearing for a person found NGRI on conditional release who has been returned to the hospital within 30 days.

For the purpose of a petition for final release from supervision related to a person found NGRI, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others.

DSHS may submit a petition for the conditional release or final release of a person found NGRI to superior court when DSHS believes that conditional release or final release is appropriate and the person has not submitted his or her own petition for release. The Attorney General represents DSHS in this hearing.

The Washington State Institute for Public Policy must research validated assessment tools for use in assessing competency to stand trial and level of risk for persons found NGRI who may become eligible for conditional release.

**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 on Original Bill (Human Services & Corrections):**  
PRO: The focus on community safety is an important element of this bill. The Governor believes other eyes in addition to hospital staff should focus on persons found NGRI before they go back to court. It is possible to make targeted improvements without a complete overhaul of the system. Liability is an important consideration. Psychiatric Advanced Registered Practitioners should have representation on the review board.

CON: There are not enough community placements available. This bill would only lead to persons not getting out of the hospital when they are ready. Due process would be sacrificed in favor of preventive detention.

**Persons Testifying (Human Services & Corrections):** PRO: Kari Burrell, Office of Governor; Tom McBride, Washington Association of Prosecuting Attorneys; Leslie Emerick, Association of Advanced Practice Psychiatric Nurses.

CON: David Lord, Disability Rights Washington; Shankar Narayan, American Civil Liberties Union.

**Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):**

PRO: This legislation was developed in response to the September 2009 escape from Eastern State Hospital of a person who had been found not guilty by reason of insanity. The Governor supports the concept of allowing people with particularly dangerous behaviors to be placed in facilities where they can be more safely managed than in a state hospital.

**Persons Testifying (Ways & Means):** PRO: Kari Burrell, Governor's Office.