

HOUSE BILL REPORT

2SSB 6214

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to mental illness.

Brief Description: Revising provisions relating to commitment of mentally ill persons.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Long, Hargrove, McDonald, Deccio, Franklin, Stevens, Strannigan, Wood, Schow, Swecker, Hale, Sellar, Thibaudeau, Haugen, Winsley and Oke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/24/98, 2/25/98 [DPA].

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 12 members: Representatives Ballasiotes, Chairman; Benson, Vice Chairman; Koster, Vice Chairman; Quall, Ranking Minority Member; O'Brien, Assistant Ranking Minority Member; Cairnes; Dickerson; Hickel; McCune; Mitchell; Radcliff and Sullivan.

Staff: Josh Weiss (786-7292).

Background: During the 1997 legislative interim, a King County task force on mentally ill offenders was created to address issues related to the mentally ill misdemeanor offenders. The task force made recommendations concerning both internal process changes and statutory changes. The changes to the statutes included recommendations concerning focusing the process on public safety, increasing the sharing of information, and ensuring additional opportunities for treatment of mentally ill offenders.

Civil Commitment - 71.05 RCW:

A person may be involuntarily committed by a mental health professional designated by the county (MHPDC), who receives independently verified information alleging that the person: (1) presents a likelihood of serious harm to others or him/herself; or (2) is gravely disabled.

"Likelihood of serious harm" means that the person presents a substantial risk of physical harm upon one's own self, upon another, or upon the property of another. "Gravely

disabled" means that the person because of a mental disorder cannot provide for his/her own needs or manifests severe deterioration in routine functioning.

A police officer may also directly detain a person for up to 12 hours based on the same criteria, but the person must be seen by a mental health professional within three hours, and by the MHPDC within 12 hours, or be released. The MHPDC may petition the superior court to detain the person for 72 more hours in order to evaluate and treat the person. In addition, the MHPDC may take the person into emergency evaluation and treatment for 72 hours if the person:

- (1) presents an *imminent* likelihood of serious harm to him/herself or others; or
- (2) is in *imminent* danger because of being gravely disabled. If the MHPDC involuntarily commits a person, the MHPDC must file a petition with the court and serve the person's attorney by the next judicial day.

A facility which receives an involuntarily committed person must notify the court and the MHPDC of the date of admission, and the court must hold a probable cause hearing within 72 hours. The MHPDC may successively petition to have the person held for an additional 180 days, if:

- (1) when the person was in custody, he/she threatened, attempted, or inflicted physical harm on another or himself, or presented the likelihood of serious harm; or
- (2) was taken into custody for attempting to inflict physical harm on another or himself, and continues to present a likelihood of serious harm; or
- (3) was previously determined incompetent and criminal charges were dropped, and there is a substantial likelihood of repeating the acts; or
- (4) the person is gravely disabled. If a person is going to be released due to the fact that the MHPDC has not filed a petition to hold the person for additional time, the MHPDC must notify the prosecuting attorney.

Criminal Commitment - 10.77 RCW:

Current law allows a person who is either "criminally insane" or "incompetent" to be involuntarily committed for some period of time. A person is "criminally insane" if he or she has been acquitted from a crime charged by reason of insanity and is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts. A person is "incompetent" to stand trial if he or she lacks the capacity to understand the nature of the proceedings or assist in his or her own defense.

If a person is acquitted by reason of insanity, the commitment cannot exceed the maximum possible penal sentence for any charge for which he or she was acquitted. Two professional persons must examine and report upon the mental condition of the defendant following the filing of such a defense. The defendant must be determined to have been insane at the time of the offense. If the defendant is found not to be a danger to other persons, and does not present a substantial likelihood of committing felonious acts, he or she may be discharged. Otherwise, the defendant is entered into a treatment and rehabilitation program.

The defendant may be conditionally released if he or she does not present a danger to other persons and does not present a substantial likelihood of committing felonious acts. If the defendant does not adhere to the conditions of release, he or she may be apprehended. A person who is conditionally released, and who no longer presents a substantial danger to other persons, or a substantial likelihood of committing felonious acts, may be discharged.

If the defendant is acquitted by reason of insanity from a misdemeanor, the court shall order the defendant's release, or shall release the defendant to the MHPDC to evaluate whether civil commitment should be pursued under 71.05 RCW.

No person may stand trial if they are found to be incompetent at the time of trial, or for any time which they remain to be incompetent. If a defendant has committed a felony, and is found to be incompetent, he or she may be committed to the custody of the Department of Social and Health Services (DSHS) until he or she regains competency or for a maximum of 90 days. If the defendant is charged with a misdemeanor, the court may allow the MHPDC to evaluate the defendant, and petition to have him or her civilly committed under 71.05 RCW. In the alternative, the court, if it finds by a preponderance of the evidence that the defendant is incompetent, may extend an order of commitment for an additional 90 days. At the end of the 90-day period (or an additional 90-day period), if the court finds that the defendant is still incompetent, the court must dismiss the case without prejudice, and either civil commitment proceedings must be instituted or the defendant shall be released. If the court finds that the person is a substantial danger to other persons, or presents a substantial likelihood of committing felonious acts, the court may extend the commitment for six months.

Summary of Amended Bill:

Civil Commitment (RCW 71.05):

The definition for "likelihood of serious harm" is expanded to include situations where an individual, who has a history of violent acts, makes threats to the physical safety of another. In determining the use of likelihood of serious harm, the use of history of violent acts is restricted to 10 years, with exclusion for periods of confinement. Definitions of "county designated mental health professional (CDMHP)," "history of violent acts," and "violent act" are added.

The court must focus on whether the person poses a danger to public safety or security rather than whether his or her action constituted a felony offense. A person's right to refuse medications is limited to the refusal of psychiatric medications at specified proceedings, other prescribed medication may not be refused.

The court, when making a determination of whether a person poses a likelihood of serious harm, must give "great weight" to the following evidence: (1) a recent history of violence; or (2) a recent history of one or more prior civil commitment orders, entered

because the person posed a "likelihood of serious harm." A prior commitment or violent act may not be the sole basis for a determination of likelihood of serious harm. "Recent" is defined to mean three years.

A CDMHP must conduct, within 48 hours, a civil commitment evaluation of any non-felon who is not in custody and is referred pursuant to the criminal competency statutes. If the CDMHP does not believe the individual should be detained, the decision must be reviewed by the court on the next judicial day. An evaluation and treatment facility must conduct a civil commitment evaluation of any non-felon who is in custody and is referred pursuant to RCW 10.77. If the facility does not believe the individual should be detained, the decision must be reviewed by the court on the next judicial day. The CDMHP, professional person conducting the evaluation and the prosecuting attorney or the Attorney General, as appropriate, may stipulate to waive the court hearing. The individual's rights are specified.

The CDMHP or professional person conducting an evaluation for civil commitment must consider: prior recommendations for civil commitment made pursuant to RCW 10.77; the person's history of violent acts; prior determinations of incompetency or insanity; and prior civil commitments.

A person who is on a conditional release has his or her condition reviewed on the basis of whether there has been a substantial decompensation and whether there is a reasonable probability that the condition can be reversed by inpatient treatment. Conditionally released persons must be returned to inpatient treatment if:

- (1) they fail to adhere to treatment, or their condition decompensates; and
- (2) they present a likelihood of serious harm.

A patient's consent is not necessary in order for a professional to communicate with, or provide records to, professional staff at a state or local correctional facility where the patient is now confined. The court must enter findings when it disagrees with a professional person's recommendation on civil commitment. The findings must include whether the state met its burden of proof.

DSHS must develop statewide protocols for use by CDMHPs under civil and criminal procedures. The protocols must be developed by September 1, 1999, and updated at least every three years.

Criminal Competency (RCW 10.77):

This focuses on whether the person poses a danger to public safety or security rather than whether his or her action constituted a felony offense. Definitions of "expert or professional person," "CDMHP," "history of violent act," and "violent act" are provided. Violent act means behavior that resulted in, or if completed would have resulted in, homicide, nonfatal injuries, or substantial damage to property.

When a person has been held for mental health treatment for the statutory maximum possible period of confinement allowable under Chapter 10.77 RCW, he or she must be referred to a CDMHP. Time lines are added for notice and transfer of records.

Deferral of bail is authorized pending evaluations for sanity or competency and standards are provided for setting bail. The department's authority to contract out sanity or competency evaluations is clarified.

Orders committing a defendant for a sanity or competency evaluation must be transmitted to the CDMHP located in the county where the defendant was charged.

Defendants who have been committed for sanity or competency evaluations must be referred for civil commitment evaluations if:

- (1) they are charged with a felony; or
- (2) they are charged with a non-felony crime and;
 - (i) are charged with, or have, a history of one or more violent acts;
 - (ii) pose a threat to public safety;
 - (iii) have been previously acquitted by reason of insanity; or
 - (iv) have been previously found incompetent under Chapter 10.77 RCW.

If a civil commitment evaluation is recommended, under this section, the court must order the civil commitment evaluation to be conducted prior to the defendant's release. Time lines are added for conducting a civil commitment evaluation of incompetent defendants. Information sharing is mandated between courts, CDMHPs and prosecutors.

Current law in regards to felony offenders is retained, except when the court finds a felon incompetent, he or she must be committed to DSHS for evaluation and treatment.

Non-felony defendants who are determined to be incompetent and who:

- (1) have a history of one or more violent acts or a pending charge involving one or more violent acts;
- (2) have been acquitted by reason of insanity; or
- (3) have been previously found incompetent regarding an offense which caused harm to another, must be placed in a facility designated by DSHS for up to 14 days and/or up to 90 days on conditional release for mental health treatment and competency restoration. If competency is restored, the defendant is returned to the original court for trial. If competency is not restored, the criminal charges are dismissed and the person is referred to a CDMHP or evaluation and treatment facility for evaluation of a commitment under RCW 71.05. The court may refer any other non-felony defendant to a CDMHP for evaluation. The CDMHP must provide notice of evaluation results to specified persons.

Conditionally released persons under RCW 10.77 must be apprehended and returned to treatment if they present a threat to public safety.

Relevant records and reports, as defined by DSHS, must be made available to law enforcement. Relevant records and reports, as defined by DSHS, must accompany a defendant who is transferred to a mental health facility or correctional facility.

Miscellaneous Provisions:

Outpatient mental health treatment providers must be notified of their patient's release from a state correctional facility. Records and reports must be made available to the treatment provider upon request. This section only applies to persons committed to a correctional facility after the effective date of this section, who received treatment within two years prior to their confinement. The local regional support network is notified if the treatment provider cannot be located.

A defendant's criminal history must identify acquittals by reason of insanity and dismissals due to lack of competency.

The Washington State Institute for Public Policy (WSIPP) must conduct an evaluation of this act.

Amended Bill Compared to Second Substitute Bill: The definition of "anti-psychotic medications" no longer refers to specific medications but is left general enough to allow the use of new medications. CDMHPs, in addition to the professional person and prosecuting attorney, must now give approval to waive a court hearing reviewing the CDMHP's less-restrictive alternative decision. The DSHS is required to develop protocols for use by the CDMHP under RCW 10.77, in addition to RCW 71.05. The definition of "history of one or more violent acts" has been re-written to address concerns about its clarity, though the meaning has not changed. Other technical and clarifying changes are made throughout.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 25, 1998.

Effective Date of Amended Bill: This bill takes effect July 1, 1998, except for Sections 18, 34, 37, and 38, which take effect March 1, 1999.

Testimony For: This bill is important because it eliminates the distinction between misdemeanants and felons, and allows violent misdemeanants to be more easily committed. The linkage between the civil and criminal involuntary commitment systems is necessary. The bill is important because it focuses on preventing future harm by getting people back into treatment before rather than after another violent act occurs.

On August 24, 1997, a retired city of Seattle firefighter, Mr. Stan Stevenson, was murdered by Dan Van Ho. Mr. Ho had a long history of criminal activity and mental illness preceding the murder. Ho had been deemed incompetent to stand trial and

released from custody only 11 days prior to Mr. Stevenson's murder. 2SSB 6214 would address the flaws in a system of involuntary commitment which allowed Mr. Ho to be a threat to society.

Seventy-six percent of criminal mentally ill offenders who are released into society are repeat offenders. The King County task force which was formed in response to Mr. Stevenson's murder was non-partisan and staffed by many professional individuals who are familiar with the commitment process. This legislation is a result of the task force, and gains credibility from its membership. The bill benefits the commitment process and aids mentally ill individuals in getting treatment. The bill is also necessary for the public safety.

The death of Mr. Stanley Stevenson is a tragedy for Mr. Stevenson's family as well as for Dan Van Ho. The bill addresses the tragedy, providing for public safety and the humane treatment of mentally ill offenders. While the bill makes a critical link between the civil and criminal processes, it does not unnecessarily blur the lines between the two. Section 18 needs to provide more flexibility in making hospitalization an option.

Projecting the effective date of several provisions out to March 1999 allows for more effective implementation of the program.

The bill should provide for a pool of money which is designated for the use of new, more effective "atypical" drugs. These drugs, while more expensive than other drugs, allow for greater compliance with medical plans, and are more effective in treating many mental illnesses. "Atypicals" are currently in use by the DSHS, and the fiscal note for the bill includes money for this current use.

The courts are currently clogged with people who desperately need help with mental illnesses. This bill allows judges greater flexibility to provide this help. The parameters of the study to be conducted by the Washington State Institute for Public Policy should be expanded in scope.

(Pro w/concerns): Section 12 should be deleted entirely, as should Section 14 since it places an unfair emphasis on a patient's past condition rather than on his or her current condition. Section 25 shifts the burden of proof to the accused. This section also improperly requires a judge to give written proof of a decision when court rules already require this. Section 31 presents constitutional problems in its restriction of bail. The increased number of hearings required by the bill will be expensive. While the bill is headed in the right direction, it is in need of technical polishing.

Testimony Against: The cost of inpatient treatment on local government is going to increase significantly. The lack of procedural safeguards as well as the lack of a standard of review to be used by the court in reviewing the decisions made by professional persons is a concern.

Testified: Pro: Ted Inkley, Seattle Attorney's Office; Preston Hess, Snohomish County Human Services, Mental Health Division; Dr. Richard Winslow, Medical Director's, Community Mental Health Programs of King County; James Goche, Washington Psychiatric Association; Sue and Don Plucker, Stevenson Family; Randy Ray, Eli Whitney and Company; Judge Gordon Godfrey, Superior Court Judges Association; and Jean Wessman, Association of Counties.

Pro (with concerns): Elizabeth Schrag, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Barbara Gletne, King County; and Jann Hoppler, Department of Health and Social Services, Mental Health.

Con: Terry Kohl, Washington Protection and Advocacy System.