

HOUSE BILL ANALYSIS

HB 2844

Title: An act relating to mental illness.

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

Sponsors: Representatives Constantine, Ballasiotes, Costa, Dickerson, Cody, Radcliff, Sheahan, O'Brien, Butler, Kenney, Wood, Ogden, Cooper, Tokuda, Anderson and Lantz.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Josh Weiss (786-7292); Doug Ruth (786-7134).

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 misdemeanant 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 other 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 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 habilitation 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 CMHP 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 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 CMHP 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 Proposed Substitute Bill: HB 2884 makes significant changes to both the civil and criminal involuntary commitment processes.

Civil Commitment - 71.05 RCW:

The intent section is amended to indicate that the prevention– of inappropriate, indefinite commitment of mentally disordered persons is more appropriate than ending– this situation.

County designated mental health professional– (CDMHP) is defined and replaces the MHPDC throughout the bill.

History of one or more violent acts– is defined as the period of time 10 years prior to filing a petition for commitment, excluding time spent at a facility or jail. Violent act– is defined.

The definition of likelihood of serious harm– is expanded to include situations where the person has threatened the physical safety of another and has a history of one or more violent acts (as is newly defined).

The court is required to focus on whether the person poses a danger to public safety or security rather than whether his or her action constituted a felony offense. References to felony– have been replaced throughout with a reference to crimes that involve a threat to public safety or security.–

A person’s right to refuse medications is limited to the refusal of psychiatric medications at specified proceedings.

A new section is added which requires that, in making a determination of whether there is a likelihood of serious harm,– the court shall give great weight: to (1) recent history (three years prior to the hearing) of violent acts; and (2) recent history

of one or more commitments. A prior commitment or violent act may not be the sole basis for a determination of likelihood of serious harm.

A new section is added which requires the CDMHP to examine a person who has been referred to the CDHMP within 48 hours. If the CDHMP determines that a 90-day, less restrictive alternative is appropriate, the decision is presented to the court for review. If an individual is placed in a facility pursuant to 10.77.090(1)(d)(iii)(B), a professional person must determine whether to petition for a 90-day inpatient review. If the professional recommends release of the person, the recommendation must be reviewed by the court. If the prosecutor and professional stipulate that the person does not present a likelihood of serious harm and is not gravely disabled, the hearing is not required.

A new section is added requiring the CDMHP, in making an evaluation, to consider prior recommendations and evaluations, the history of one or more violent acts, prior determinations of incompetency or insanity under 10.77 RCW, and prior commitments under 71.05 RCW.

When a person is conditionally released, and fails to adhere to conditions, or experiences substantial deterioration, and, as a result, presents an increased likelihood of serious harm, the CDMHP, facility, or secretary of DSHS may order the person apprehended and temporarily detained.

Other technical amendments are made throughout.

Criminal Commitment - 10.77 RCW:

A new section is added requiring that a court which does not follow a professional person's recommendation that a person be committed for treatment, must enter findings of its rationale, including whether the state met its burden of showing that the person presented a likelihood of serious harm.

A new section is added requiring the DSHS to develop statewide protocols to be utilized by professional persons and the CDMHP.

References to felony— have been replaced throughout with a reference to crimes that involve a threat to public safety or security.— The language indicating that no condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute 'insanity'— has been deleted throughout.

Definitions for psychiatrist,— psychologist,— and social worker— have been wrapped into one definition for an expert or professional person.—

Violent act– is added to the definitions, and means an act that resulted in, would have resulted in, or is threatened to be carried out by, a person with intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property.

County designated mental health professional– and history of one or more violent acts– are defined to mean the same as in 71.05.020 RCW.

Language requiring that treatment for a person acquitted by reason of insanity not exceed the maximum possible penal sentence for the crime charged has been deleted and replaced with a broader new section. This new section limits the time of treatment whenever a person has been committed under any provision of the chapter, or ordered to undergo alternative treatment under the chapter. When the person has not been released within seven days of the maximum possible penal sentence, and the professional in charge of the facility believes that the person will not be released, that professional must give notice to the CDMHP. The CDMHP must then determine whether to initiate proceedings under 71.05 RCW.

New language allows a court to deny bail until an examination has been done, when a defendant has pled not guilty by reason of insanity. In determining bail after the evaluation, the court should consider: (1) recommendations of professional persons regarding the defendant's competency, sanity, or diminished capacity; (2) whether the defendant has a recent history of one or more violent acts; (3) whether the defendant has previously been acquitted by reason of insanity, or found incompetent; (4) whether there is likelihood that the defendant will fail to appear for future hearings; and (5) whether the defendant is a threat to public safety. The secretary of DSHS is given the authority to execute any agreements necessary to implement this section.

A new section requires that whenever a defendant is evaluated pursuant to a not guilty by reason of insanity plea, a copy of the evaluation must be sent to the CDMHP. The professional who makes such a report is required to recommend to the court whether the CDMHP should examine the defendant for the purpose of filing a civil commitment action under 71.05 RCW in cases where the court determines that the defendant is charged with a felony or nonfelony, and: (1) has a history of one or more violent acts, or a pending charge of one or more violent acts; (2) is a threat to public safety; (3) has previously been acquitted by reason of insanity; (4) has previously been found incompetent. The facility performing the examination must send a copy of the report and recommendations to the court, the CDMHP, the prosecuting attorney, defense attorney, and the professional person at the facility where the individual is being held. If the facility concludes that there is a likelihood of serious harm or the person is gravely disabled, a civil commitment evaluation is required.

New language retains current law with regard to felony offenders, except when the court finds a felon incompetent, he or she shall be committed to DSHS for evaluation and treatment. Nonfelony defendants who are determined to be incompetent and who: (1) have a history or pending charge of one or more violent acts; or (2) have been acquitted by reason of sanity; or (3) have been previously found incompetent, shall be placed in a DSHS designated facility for up to 14 days and/or up to 90 days on conditional release for 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 CDHMP or evaluation and treatment facility for evaluation of a commitment under 71.05 RCW. The court may refer any other nonfelony defendants to a CDHMP for evaluation. The CDHMP shall provide notice of evaluation results to specified persons.

Conditionally released person 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 the DSHS, shall be made available to law enforcement.

Relevant records and reports, as defined by the DSHS, shall accompany a defendant who is transferred to a mental health facility or correctional facility.

Miscellaneous Provisions:

Outpatient mental health treatment providers shall be notified of their patient's release from a state correctional facility. Records and reports shall 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 shall identify acquittals by reason of insanity and dismissals due to lack of competency.

The Washington State Institute for Public Policy is required to conduct an evaluation of the bill to determine: (1) if there has been a reduction of recidivism; (2) the number of nonfelony offenders referred to competency restoration; and (3) whether the information-sharing provisions of the bill are adequate.

Other technical amendments are made throughout.

Proposed Substitute Bill Compared to Original Bill: Language pertaining to the committal of nonfelony defendants whom are determined to be incompetent is

amended. The language of the first factor, formerly stating A history of, or any pending charge which involves one or more violent acts– is replaced with A history of one or more violent acts, or a pending charge of one or more violent acts– (Section 37).

Fiscal Note: Not requested.

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

Office of Program Research