

HOUSE BILL REPORT

HB 2513

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to information concerning mental health services.

Brief Description: Providing for the release of mental health information under certain circumstances.

Sponsors: Representatives Ballasiotes, O'Brien, Koster and Hurst; by request of Department of Social and Health Services and Department of Corrections.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 1/26/00, 2/4/00 [DPS].

Brief Summary of Substitute Bill

- Requires mental health providers to release records and reports to the Department of Corrections (DOC) regarding offenders sentences under the Sentencing Reform Act (SRA).
- Authorizes only certain employees within the DOC to obtain the mental health records of offenders for purposes of preparing pre-sentence reports, providing supervision of the person, and determining the person's risk to the community.
- Requires that all mental health information received by the DOC to remain confidential except under certain circumstances.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Minority Report: Do not pass. Signed by 1 member: Representative Cairnes, Republican Vice Chair.

Staff: Yvonne Walker (786-7841).

Background:

Pre-Sentence Reports. Before imposing a sentence upon an offender a court usually conducts a pre-sentence hearing. At that time, the court may order the DOC to complete a pre-sentence report to assist the trial court in sentencing the offender after he or she has been convicted. A pre-sentence report usually includes an offender's prior convictions, prior arrests, employment history, education history, and family and social background.

Release Plans. Prior to an offender's release from confinement, a release plan may be developed for the purpose of determining the offender's risk to the community and to plan for any needed treatment and support services that may be needed during his or her transition back into the community.

Mental health providers usually do not provide records or reports to the DOC on a regular basis for pre-sentencing or post sentencing purposes, regarding mental health services provided to an offender while voluntarily or involuntarily under their care.

Summary of Substitute Bill:

Mental health providers are required to release records and reports to the DOC regarding offenders sentenced under the SRA.

Pre-Sentence Reports and Release Plans. Upon the DOC request, information relating to mental health services delivered to a person sentenced or being sentenced under the SRA, must be released to the department's personnel. Records may only be released to the DOC employees for the sole purpose of carrying out the responsibilities of their office. The information must be used for the purposes of completing a pre-sentence investigation, or for the supervision of the incarcerated person, or for determining the person's risk to the community upon his or her release. The request must be in writing and does not require the consent of the offender subject of the record.

The Department of Social and Health Services (DSHS) and the DOC, in consultation with regional support networks, mental health service providers, mental health consumers, and advocates for persons with mental illness, must adopt rules regarding the release of such records including the type and scope of information to be released. In addition, these rules must both facilitate the DOC's ability to carry out its

responsibility of planning and ensuring community protection, and establish requirements for the notification of all persons under the supervision of the DOC.

All information received by the DOC must remain confidential and can only be used for the purpose of providing evidence or a report to the court, for planning for the supervision of an offender, or for assessment of an offender's risk to the community.

Any information received by the DOC may be released to the Indeterminate Sentencing Review Board (ISRB). Further disclosure by the ISRB must be consistent with any written policy of the board. In addition, the DOC may also share any mental health information received with other state or local agencies for the purposes of completing a presentence investigation, supervision of a person, or for determining an offender's risk to the community. All records that are disclosed must be in a manner that is consistent with written policy to be developed by the DOC.

No mental health service provider or employee may be held liable for any mental health information released or used by the DOC. Information received by the DOC regarding high risk offenders may only be disclosed by the department to individuals only as necessary for them to take reasonable steps for the purpose of self protection. The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender's behavior to the department. The DOC may not disclose or release to the public copies of any treatment documents or records.

In a sentencing hearing or any other hearing in which the department may present a risk assessment or make a recommendation to the court, or on a motion of the defendant, the court may exclude the public from the hearing, seal portions of the hearing record or court file, or grant other relief as necessary to prevent disclosure to the public of information related to mental health services of a particular offender.

Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

Substitute Bill Compared to Original Bill: Only certain employees within the DOC may obtain and distribute mental health records of those sentenced or being sentenced under the SRA. In particular, only those DOC employees that are directly responsible for presentence reports for the courts and risk assessment plans are authorized to obtain mental health records of offenders. Records may only be released to the DOC employees for the sole purpose of carrying out the responsibilities of their office.

All information received by the DOC must remain confidential and can only be used for the purpose of providing evidence or a report to the court, for planning for the supervision of an offender, or for assessment of an offender's risk to the community.

Information received by the DOC regarding high risk offenders may only be disclosed by the department to individuals only as necessary for them to take reasonable steps for the purpose of self protection. The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender's behavior to the department. The DOC may not disclose or release to the public copies of any treatment documents or records.

In a sentencing hearing or any other hearing in which the department may present a risk assessment or make a recommendation to the court, or on a motion of the defendant, the court may exclude the public from the hearing, seal portions of the hearing record or court file, or grant other relief as may be necessary to prevent disclosure to the public of information related to mental health services of a particular offender.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: All records of mental health, including court records related to involuntary treatment, are by law confidential with some exceptions. One of those exceptions include the sharing of mental health records between mental health providers in the community, such as hospitals, and the DOC when they are providing in-patient care. However, the law is unclear regarding the sharing of mental health records when it comes to using those records for other activities such as putting together court requested pre-sentence reports, providing supervision for the offender in an institution, or for purposes of pre-release planning.

The DOC has an obligation to provide the most complete and comprehensive information as they can to the judges for purposes of preparing pre-sentence reports and determining sentence conditions for an offender. This bill will allow the DOC to obtain that information to be used for the supervision of the offender while in custody and also after the offender has been released back into the community. The bill will also allow the DOC to release mental health information received from public mental health agencies directly to police agencies, upon request, during cases of emergencies or crisis situations.

Testimony Against: None.

Testified: (In support) Paul Montgomery, Department of Social and Health Services; David Weston, Department of Social and Health Services; and Kathy Stout, Department of Corrections.