

# HOUSE BILL ANALYSIS

## ESSB 6487

---

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

---

**Sponsors:** Senators Long and Hargrove.

**Hearing:** February 23, 2000.

---

### HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

#### **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 Department of Corrections (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 BILL:**

Mental health providers are permitted to share mental health records and reports with those DOC employees for whom the information is necessary to their employment duties.

---

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 of Corrections 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, for the supervision of an 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, or reporting of the offender's behavior to the department. The DOC may not disclose or release to the public copies of any treatment documents or records.

In sentencing hearings or any other hearings in which DOC presents mental health information, the court may close those portions of the hearing that include disclosure of

mental health information to the public, seal those portions of the record, or grant other relief to prevent the inappropriate disclosure of mental health information to the public.

Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient, the release of such information may be restricted as necessary to comply with federal law and regulations.

**FISCAL NOTE:** Requested on February 17, 2000.

**EFFECTIVE DATE:** Ninety days after adjournment of a session in which bill is passed.