

SENATE BILL REPORT

SB 5011

As Reported By Senate Committee On:
Human Services & Corrections, February 12, 1999
Ways & Means, March 5, 1999

Title: An act relating to dangerous mentally ill offenders.

Brief Description: Changing provisions relating to dangerous mentally ill offenders.

Sponsors: Senators Long, Hargrove, Franklin, Loveland, Winsley, Patterson, Deccio, McCaslin, Goings, Oke and Costa.

Brief History:

Committee Activity: Human Services & Corrections: 1/19/99, 2/12/99 [DPS-WM].
Ways & Means: 2/25/99, 3/5/99 [DPS (HSC)].

Brief Summary of Bill

- Establishes a release planning process by a multidisciplinary team for offenders believed both dangerous and mentally ill whose DOC confinement is ending.
- Refines the civil commitment hearing process for dangerous mentally ill offenders recommended for civil commitment.
- Provides case management for dangerous mentally ill offenders released to the community and provides funding to RSNs for services provided under this act.
- Requires DSHS and DOC to establish agreements to facilitate provision of services and assist Medicaid eligible offenders in enrolling.
- Requires a study of the effectiveness of services provided and reductions in recidivism.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5011 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hargrove, Chair; Costa, Vice Chair; Franklin, Kohl-Welles, Long, Patterson, Sheahan and Stevens.

Staff: Fara Daun (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5011 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Loveland, Chair; Brown, Vice Chair; Fraser, Honeyford, Long, McDonald, Rossi, B. Sheldon, Snyder, Spanel, Thibaudeau and Wojahn.

Staff: Tim Yowell (786-7435)

Background: It is estimated that the Department of Corrections releases over 125 inmates each year who are believed to be both mentally ill and pose a serious threat to public safety. Generally these offenders have completed their sentences and are referred for either civil commitment or community services for their mental disorders. For a variety of reasons, the mental health community has been unable to provide, or the offenders are unwilling to engage in, needed mental health services.

Summary of Substitute Bill: The Department of Corrections (DOC) must identify offenders who (1) are reasonably believed to be dangerous to themselves or others, and (2) have a mental disorder.

Prior to release, DOC must create a team consisting of representatives from DOC, the Regional Support Network (RSN), appropriate divisions of the Department of Social and Health Services (DSHS), and providers as appropriate, to develop a plan for delivery of treatment and support services to these offenders upon release. The team consults with the offender's counsel, if any, and as appropriate, the offender's family and community. The team must also provide, through the victim/witness program, opportunity for enrolled persons to provide information and comments on the potential safety risk an offender poses to specific individuals or classes of individuals. The team can propose any appropriate plan including: (1) involuntary civil commitment for inpatient treatment; (2) an involuntary civil commitment to a less restrictive alternative (LRA); (3) DOC supervised community treatment; or (4) voluntary community treatment.

Prior to release, the team determines whether a review by a county designated mental health professional (CDMHP) is needed for the purposes of involuntary civil commitment. If the review is recommended, supporting documentation is forwarded to the appropriate CDMHP. If recommended by the team, CDMHP evaluation must occur between five and ten days prior to release from DOC.

On the day of release, a second review by a CDMHP (when the initial review did not result in a commitment or LRA decision) must be conducted if requested by the team. The request must be based upon new information or a change in the offender's mental condition.

If the CDMHP determines an emergency detention is necessary, DOC must arrange transportation for the offender to a state hospital or to a consenting evaluation and treatment (E&T) facility serving the jurisdiction where the offender will reside upon release.

If the CDMHP determines an LRA is appropriate, CDMHP must seek a summons to require the offender to appear at an E&T facility serving the jurisdiction where the offender will reside upon release. If a summons is issued, DOC must transport the offender to the E&T.

Changes to the intent language clarify that past confinement in a state, federal, or local correctional facility does not limit a person's access to mental health services. Changes also clarify that the language relating to RSN services only limits the RSN's duties regarding persons currently confined at, or under the supervision of, a state hospital under the criminal insanity statutes.

When conducting an evaluation of an offender coming out of DOC, time spent in confinement is not automatically included in determining whether the person has committed a recent overt act— when the court makes a decision whether to require an LRA. In addition, the CDMHP or professional person must consider the offender's recent history of judicially ordered (through a *Harper* hearing) anti-psychotic medication while in confinement.

When determining whether an offender is a danger to self or others under the mental health civil commitment law, a court must give great weight— to evidence regarding the offender's recent history of judicially ordered involuntary anti-psychotic medication while in confinement.

DOC and DSHS must enter into working agreements to assist offenders in obtaining a Medicaid eligibility decision prior to their release from DOC.

DSHS must contract for case management services to assist offenders in coordination and procurement of needed services as identified by the assessment team at DOC. The offenders are eligible to receive assistance for up to five years. DSHS must also provide additional funds to the RSNs for expenses incurred for offenders who would not have otherwise received their services.

The Washington State Institute for Public Policy and the University of Washington must collaborate on an evaluation and report to the Legislature on December 1, 2004. The report must evaluate whether the act results in:

- A reduction in criminal recidivism;
- Increases in treatment of and services to dangerous mentally ill offenders and increases in the effectiveness of those services; and
- Bed spaces saved in DOC by this proposal.

The study must also evaluate:

- Possible expansion of the release planning process to other groups of offenders including cost estimates;
- Effectiveness of efforts to obtain early Medicaid enrollment and associated cost savings; and
- The validity of DOC's risk assessment tool.

The study must separate evaluation data by whether offenders have mental illness or mental illness combined with substance abuse and must cross-reference it to criminal history.

The departments must adopt rules, in consultation with the RSNs and provider representatives, to implement the act.

Substitute Bill Compared to Original Bill: The substitute bill specifically lists the Division of Developmental Disabilities and treatment providers as team members where appropriate.

The assessment of an offender's potential risk for dangerousness includes behavior known to DOC as well as the scientifically validated risk factors. The team must provide opportunity for persons enrolled with the victim/witness program to comment on the potential safety risk the offender poses to specific individuals or classes of individuals.

The substitute strikes language that specified which county designated mental health professional must conduct an evaluation for involuntary treatment because these evaluations are currently conducted in the DOC facility and the language would have interfered with general practice.

The fiscal language has been clarified.

Appropriation: None.

Fiscal Note: Requested on January 11, 1999.

Effective Date: Most sections of the bill take effect on March 1, 2000.

Testimony For (Human Services & Corrections): The process of developing the bill was inclusive and provided input for all the stakeholders. This is good public policy and is a responsible and reasonable first step to address an important problem. There will be some savings to DOC because of offenders who can be released when eligible due to an appropriate plan.

This will dovetail with the Governor's Offender Accountability Act should both pass. During early release, the treatment can be a condition that the community corrections officer will monitor for compliance. This population will need additional supervision.

The five-year case management and ongoing care are extremely important. At present, treatment is often insufficient and the longitudinal issue is the most difficult. The separate allocation of funds for this population is important because they have different and greater needs than the mentally ill population generally. The bill needs to be fully funded.

Appropriate treatment works for mentally ill offenders. Providing treatment gives mentally ill offenders the opportunity to become productive citizens. Twenty percent of families in Washington are affected by the mental illness of a family member or close friend. Mental illness can happen to anyone, and when it is untreated persons are more likely to become offenders. NAMI supports the bill if fully funded, but begs the Legislature to look at the needs of the non-offender mentally ill population.

Testimony Against (Human Services & Corrections): The most difficult component to accomplish will be putting together the multiplicity of services, including housing. It will not be easy to accomplish but the departments are committed to making it happen if it becomes law. This is not included in the Governor's budget, thus departments cannot support it.

The preliminary fiscal note may be inadequate and counties that are disproportionately impacted need assurance that the distribution process will account for that impact.

Need to involve developmental disabilities professionals and providers in the planning process as well as the treatment following release. Providers need representation in the rule-making process.

Treatment for the mentally ill before they commit a crime would prevent the need for this kind of legislation and save money in the long term. Families need to know how to work with the system to secure treatment for their mentally ill offender relatives.

Civil commitment is a punitive restriction on liberty. The bill is vague and over broad. The screening process is expensive and unnecessary because people identify themselves as mentally ill. Dangerousness is indicated by criminal history and substance abuse, but not by mental illness. Involuntary medications are not as effective as stated and treatment may exacerbate the condition.

Testified (Human Services & Corrections): Jann Hoppler, Mental Health Division; Beth Anderson, Department of Corrections; Dr. Richard Winslow, Washington State Psychiatric Association (pro); David E. Stewart, Pierce County RSN; Paul Trause, King County Prosecutor's Office (pro); Andrea Stephenson, MHC (pro); Tom Richardson, NAMI Washington; Terry Decker, NAMI Washington; Rick Weaver, Washington Community Mental Health Council (pro); Jane Cartmell, Kitsap NAMI (pro); Ed Holen, Washington State Developmental Disabilities Council (pro/concern); Richard Warner, Citizen's Commission on Human Rights (con); Robert Boruchowitz, The Defender Association (written testimony, concerns).

Testimony For (Ways & Means): Released offenders with mental illness need a coordinated program of services if they are not to continue offending, which creates costs for society and the criminal justice system. With the extra resources to do the job right, there is a reasonable chance of success with this very small but very difficult population. Adequate funding is essential to achieve the goals of the legislation. Last year's legislation, SSB 6214, addressed one critical part of the problem of mentally ill offenders. This bill addresses another critical piece.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): PRO: Jann Hoppler, DSHS Mental Health Division (with concerns); Dr. Richard Winslow, WA State Psychiatric Assn.; Jean Wessman, AWC; Dave Stewart, Pierce County Regional Support Network; Eleanor Owen, WA Advocates for the Mentally Ill; Laurie Stevenson Weinkopf; Don Plucker.