

SENATE BILL REPORT

SSB 5533

As Amended by House, April 9, 2007

Title: An act relating to procedures for individuals who are mentally ill and engaged in acts constituting criminal behavior.

Brief Description: Revising procedures for individuals who are mentally ill and engaged in acts constituting criminal behavior.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Pflug, Hargrove, Kline, Swecker, Delvin, Stevens, Holmquist, Parlette and Hewitt).

Brief History:

Committee Activity: Human Services & Corrections: 2/02/07, 2/20/07 [DPS-WM].

Ways & Means: 2/28/07, 3/05/07 [DPS(HSC)].

Passed Senate: 3/12/07, 49-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5533 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Regala, Vice Chair; Brandland, Carrell, Marr and McAuliffe.

Staff: Indu Thomas (786-7459)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5533 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Zarelli, Ranking Minority Member; Brandland, Carrell, Fairley, Hatfield, Hewitt, Hobbs, Honeyford, Keiser, Kohl-Welles, Oemig, Parlette, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Tom.

Staff: Tim Yowell (786-7435)

Background: Under current law, an individual can stand trial for a crime only when competent. A person who is competent is one who is capable of understanding his or her position as a criminal defendant and the nature of the criminal proceedings, and able to assist counsel in his or her defense. Competency evaluations and competency restoration treatments can be ordered by the court if mental illness is an issue. In general, individuals who commit

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

acts constituting misdemeanor crimes which are not serious crimes generally spend a maximum of 30 days in jail facilities. However, jail officials report that individuals with mental disorders who commit the same type of crimes spend an average of 60 - 90 days in jail.

In September 2006, the Washington Association of Sheriffs and Police Chiefs (WASPC) and the Washington affiliate of the National Alliance on Mental Illness (NAMI) held a summit to address the increasing numbers, recidivism rates, and longer jail terms of offenders who suffer from mental illness.

Law enforcement-based crisis intervention teams and training to address increasing contacts with individuals with mental illness exist in some of the larger communities of Washington State. Some communities have crisis triage facilities or receiving centers for individuals with mental illness. Jail-based mental health services, including medications and stabilization, Mental Health Courts and Drug Courts that can accommodate co-occurring disorders have developed in communities across the state to address the issues presented by individuals with severe mental illness in the criminal justice system.

Summary of Substitute Bill: The legislative intent section of this bill states that the needs of individuals with mental illness and the public safety needs of society are better served when individuals with mental illness are provided with an opportunity to obtain treatment and support.

Police officers are permitted to divert individuals with mental illness who have been alleged to have committed misdemeanor crimes, which are not serious crimes, to mental health treatment. The general statutory provisions regarding competency evaluation and restoration of individuals with mental disorders are consolidated into one new section. New sections are created to address specific procedures in misdemeanor and felony restoration cases. Mental health professionals are permitted to return individuals to court at any time during the restoration period if they determine that the individual will not regain competency. Only individuals who have been alleged to have committed misdemeanor crimes that are serious in nature may be referred for competency restoration.

A crisis stabilization unit is defined as a short-term facility for individuals who require only stabilization and intervention. The Department of Social and Health Services is required to certify and to establish minimum standards for crisis stabilization units, such as:

- 1) physical separation from the general offender population if in a jail;
- 2) administering treatment by mental health professionals; and
- 3) securing appropriately, given the nature of the crime involved.

The procedure for non-emergent detentions is modified and a definition of imminent is added. The summons process and 24 hour reporting period in non-emergent Involuntary Treatment Act cases is eliminated and replaced with an "order to detain" process. The individual who poses a likelihood of serious harm or grave disability may be picked up if a judicial officer makes a probable cause finding based on the sworn statement of a mental health professional. It is expressly stated that no jail or correctional facility may be considered a less restrictive alternative.

A task force is created and mandated to review how to increase access to mental health services for individuals who are involved with the criminal justice system due to their mental illness.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: People with mental illness who are involved in the criminal justice system have similar needs to other individuals with mental illness. The Mental Health Summit organized by WASPC and NAMI and led by Sue Rohr educated legislators and community members about the need for adopting treatment alternatives for criminal offenders with mental illness. Individuals with mental illness spend as much as five times longer in jail than individuals without mental illness who commit the same crimes. These individuals are also much more likely to commit the same or similar crimes upon their release from custody.

This bill attempts to address that problem by creating a partnership between mental health service providers and the criminal justice system. There are many components to the bill, all of which are aimed at getting individuals into services that are appropriate for their needs. In the long run, this approach should save the counties and the state money. The bill does not mandate any one approach, but rather it develops options to enhance currently available resources. The three main options are: (1) the development of crisis stabilization units which are law enforcement and patient friendly; (2) authorization for police detentions directly to treatment; and (3) authorization for prosecutor initiated treatment alternatives.

This is a situation that we all know intuitively should be better; however, it must be balanced to assist individuals without violating their liberty interests. The purpose of the bill is to address the causes of the revolving door cycle and, hopefully, intervene in a manner that will prevent people from getting into the cycle.

This is a more humane way to deal with mentally ill offenders which will bring about positive outcomes for these individuals. This legislation tries to take a first step toward a more appropriate and effective place for these individuals. Mentally ill individuals struggle throughout their lives with the extensive, though not necessarily serious, criminal history which becomes an obstacle to education, employment, and housing, and, therefore, recovery. In addition to restoring dignity to the lives of these individuals, in the long run these measures will save taxpayers dollars. This bill will help lessen the cost for counties, lessen the financial burden on the jails, and alleviate prosecutor workload. The reporting requirements on the mental health system need refinement.

OTHER: It is important to add judicial officers and a member from the statewide council on mentally ill offenders housed in the Department of Corrections to the task force. The changes to the non-emergent and emergent processes that are addressed need further work. Some of these issues could be deferred and addressed through the System Transformation Initiative. Prosecutors would prefer to see a pre-arrest option for diversion and liability protections for the police officers. The provisions of the prosecutor diversion option are unnecessary and, at a

minimum, they are worth reviewing. Narrowing the misdemeanants who are eligible for competency restoration without eliminating the qualifiers expands the gap in the misdemeanor competency statutes. The changes in the involuntary treatment act provisions need to be reviewed in light of the current case law in these areas. There are a number of issues in the process provisions.

Persons Testifying (Human Services & Corrections): PRO: Senator Pflug, prime sponsor; Peter Lukevich, Washington State Partners in Crisis; Seth Dawson, Gordon Bopp, Eleanor Owen, Jim Adams, John Fisher, National Alliance on Mental Illness; David Lord, Washington Protection and Advocacy System; Cecilia Saari, member and mental health social worker, King County Long-Term Care Ombudsman; Ken Irwin, Yakima County Sheriff; Joseph Maruca, Tacoma Area Coalition of Individuals with Disabilities.

OTHER: Sally Bagshaw, Ethan Rogers, King County Prosecutors Office; Tom McBride, Washington Association of Prosecuting Attorneys; Michael Finkle, Seattle City District Attorney; Rick Lichtenstadter, Washington Defenders Association and Washington Association of Criminal Defense Attorneys; Jean Wessman, Association of Counties; Dave Stewart, Pierce County Regional Support.

Staff Summary of Public Testimony on Substitute Bill (Ways & Means): PRO: Some people with mental illness commit minor, non-violent offenses and get caught in a cycle of arrest, jail, release, and re-arrest because they do not get the treatment they need. This is a terrible waste of state, local, and human resources. The bill will save significant money for local jails and courts over time.

OTHER: There is a severe lack of evaluation and treatment facilities, especially on the eastside of the state. There needs to be financial assistance to local governments from the operating and capital budgets to develop more such facilities if the promise of this legislation is to be fulfilled.

Persons Testifying (Ways & Means): PRO: Senator Pflug, prime sponsor; Senator Brandland; Seth Dawson, National Alliance for the Mentally Ill.

OTHER: Jean Wessman, Washington Association of Counties.

House Amendment(s): The amendment clarifies three different technical points. The time allowed for competency restoration is the amount allowed under either the felony or misdemeanor procedure, and not a combination of both time periods. An offender who has been found to be incompetent should be evaluated for civil commitment proceedings. The time period for the initial period of competency restoration is for 90 days. The amendment also removes the Joint Task Force on decreasing the number of individuals with mental illness entering the criminal justice system.