
Human Services Committee

ESB 6610

Brief Description: Improving procedures relating to the commitment of persons found not guilty by reason of insanity.

Sponsors: Senators Hargrove and McAuliffe; by request of Governor Gregoire.

Brief Summary of Engrossed Bill

- Creates an independent Public Safety Review Panel to advise the Secretary of the Department of Social and Health Services (Secretary) and the courts regarding persons who have been found not guilty by reason of insanity; the panel will make recommendations regarding change in commitment status, movement about the grounds of the facility, and temporary or permanent release.
- Authorizes the Secretary to place a committed person in a secure facility if the person presents an unreasonable safety risk which is not manageable in a state hospital setting.
- Authorizes the Secretary to recommend conditional release on behalf of a person if the Secretary reasonably believes such release is appropriate and the committed person has not made an application on his or her own behalf.
- Authorizes the Secretary to file a petition for unconditional release on behalf of a committed person if the Secretary believes there are reasonable grounds for release, based upon reports and evaluations, and the person has not made an application on his or her own behalf.
- Requires the Washington State Institute for Public Policy to search for a validated mental health assessment tool or combination of tools to be used by individuals performing court-ordered competency and risk assessments and by individuals developing recommendations to courts regarding conditional release.

Hearing Date: 2/18/10

Staff: Linda Merelle (786-7092).

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.

Background:

Persons Found Not Guilty by Reason of Insanity.

A defendant is not guilty by reason of insanity (NGRI) if a judge or jury finds that at the time of the commission of the offense, as a result of a mental disease or defect, the mind of the defendant was affected to the extent that the defendant was unable to perceive the nature and quality of the act with which the defendant is charged, or the defendant was unable to tell right from wrong with respect to the particular act charged. A defendant who is found NGRI may be committed for treatment at one of Washington's two state hospitals if a judge or jury finds that the defendant presents a substantial danger to other persons or a substantial danger of committing criminal acts jeopardizing public safety or security. The term of commitment may not exceed the maximum sentence for the offense for which the defendant was acquitted by reason of insanity.

A defendant is not competent to stand trial when, as a result of a mental disease or defect, the defendant lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense.

There are currently 186 persons found NGRI confined in the state hospitals: 117 at Western State Hospital, and 69 at Eastern State Hospital. Approximately 27 percent of these individuals were found NGRI for a homicide offense, 34 percent for a combination of offenses including some degree of assault, and the remainder for other offenses. According to the Division of Behavioral Health and Recovery (DBHR), an average of 20 new defendants are found NGRI each year. Data from DBHR indicates that an average of 16 to 24 persons found NGRI per year are granted a conditional release or final release from custody.

Conditional Release.

A person found NGRI may not be released from the state hospital before the expiration of the person's term of commitment without leave of the superior court in the county in which the person was committed. A person found NGRI may petition for conditional release or final release once every six months. The Department of Social and Health Services (DSHS) must submit this petition to the court with its recommendation concerning the release. The court must then determine whether the patient may be released conditionally without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. The court may only reject the recommendation of DSHS based on substantial evidence.

Release.

A committed or conditionally released person may apply for full release from a state hospital. The Secretary of DSHS must determine whether reasonable grounds exist for release. If the Secretary approves the release, he or she can authorize the person to petition the court for release.

Summary of Bill:

Public Safety Review Panel.

Role and Composition of Public Safety Review Panel

The Secretary of the DSHS must establish an independent Public Safety Review Panel (Panel) to advise the Secretary and the courts regarding persons who have been found not guilty by reason of insanity (NGRI). The Panel shall provide advice regarding all recommendations for the following: (1) for change in commitment status; (2) to allow furloughs or temporary leaves accompanied by staff; or (3) permit movement about the grounds of the treatment facility with or without staff.

The members of the panel are to be appointed by the governor for three-year, renewable terms and are to include:

- a psychiatrist;
- a licensed clinical psychologist;
- a representative of the department of corrections;
- a prosecutor or a representative of a prosecutor's association;
- a representative of law enforcement or a law enforcement association;
- a consumer and family advocate representative; and
- a public defender.

Thirty days prior to issuing a recommendation for conditional release or 45 days prior to a recommendation for release, the Secretary must submit to the Panel his or her recommendation with the committed person's application and DSHS's risk assessment. The Panel, within funds appropriated, may request additional evaluations of the committed person.

The Secretary must provide the Panel's assessment, along with any supporting documentation, to the court, the prosecutor in the county that ordered the commitment, and counsel for the committed person. The Panel will have access, upon request, to the committed person's complete hospital record, and the Secretary must notify the Panel at appropriate intervals of any changes in the commitment or custody status of the committed person.

Support for Public Safety Review Panel

The Secretary must provide administrative and financial support to the Panel and may, in consultation with the Panel, adopt rules to implement the requirements of the act.

Report by Public Safety Review Panel

By December 1, 2014, the review panel must report to the appropriate legislative committees the following:

- whether the Panel has observed a change in the statewide consistency of evaluations and decisions concerning changes in commitment status;
- whether the Panel should be given the authority to make release decisions and monitor release conditions; and
- any other issues the Panel deems relevant.

Placement in a Secure Facility.

The Secretary has the authority to place a committed person in any secure facility operated by the Secretary or by the Department of Corrections if the committed person presents an unreasonable safety risk which is not manageable in a state hospital setting.

If the individual is placed in a secure facility, mental health treatment must be provided at the facility and the individual retains any rights afforded under the statutes governing his or her commitment. The DSHS retains legal custody of any person placed in a secure facility under this provision.

Conditional Release.

The Secretary of DSHS has the authority to recommend a conditional release if the Secretary reasonably believes such a release is appropriate and the committed person has not made an application on his or her own behalf.

If a committed person has been granted a conditional release and the court has determined that regular or periodic medication is required, the health care practitioner for the person must immediately report a change in mental health that renders the patient a potential risk to the public.

For a conditionally released person required to report to a physician, Community Corrections Officer or medical or mental health practitioner on a regular basis, the required report stating whether the person is adhering to the terms of the conditional release must include any arrests, criminal charges filed, and any significant change in the person's mental condition or other circumstances.

For a person affected by a mental disease or defect which is in a state of remission, and which may become active, rendering the person a danger to others, the court may continue such person on conditional release.

If a committed person who has been granted conditional release has been taken into custody for failing to adhere to the terms of conditional release, the court must schedule a hearing within 30 days to determine whether the conditional release is to be modified or revoked.

Petitions for Release.

The Secretary may file a petition for release on behalf of a committed person if the Secretary believes that reasonable grounds for release, based upon reports and evaluations, and the person has not made an application for release on his or her own behalf.

Mental Health Assessment Tool.

The Washington State Institute for Public Policy, in collaboration with the DSHS and other applicable entities must search for a validated mental health assessment tool or combination of tools to be used by individuals:

- performing court-ordered competency assessments and risk assessments; and
- developing recommendations to courts regarding conditional release.

This section expires June 30, 2011.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.