

# SENATE BILL REPORT

## SB 6610

---

---

As of January 19, 2010

**Title:** An act relating to improving procedures for assessing and treating persons with mental illnesses served under chapter 10.77 RCW

**Brief Description:** Concerning the assessment and treatment of certain persons with mental illnesses.

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

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/15/10.

---

### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Kevin Black (786-7747)

**Background:** 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

---

*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.*

24 persons found NGRI per year are granted a conditional release or final release from custody.

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.

**Summary of Bill:** An independent public safety review panel is established to review DSHS's proposals for conditional release, furlough, temporary leaves, or movement around the grounds concerning persons found NGRI or persons committed pursuant to a finding of incompetency to stand trial, whether or not the person is accompanied by staff. The panel must consist of six members appointed by the Governor, including a psychiatrist, a psychologist, a representative of the Department of Corrections, a prosecutor, a law enforcement representative, and a consumer and family advocate representative. The panel must complete an independent assessment and provide a written determination of the public safety risk presented by any conditional release recommended by DSHS, and may recommend that the recommendation be modified or withdrawn. The panel's recommendation must be submitted to the court with the DSHS assessment.

DSHS may submit a petition for the conditional release of a person found NGRI to superior court when DSHS believes that conditional release is appropriate and the person has not submitted his or her own petition for release.

DSHS may supervise persons found NGRI who have been conditionally released according to the persons' assessed safety risk.

The Washington State Institute for Public Policy must research validated assessment tools for use in assessing competency to stand trial and level of risk for persons found NGRI who may become eligible for conditional release.

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 2010.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: The focus on community safety is an important element of this bill. The Governor believes other eyes in addition to hospital staff should focus on persons found NGRI before they go back to court. It is possible to make targeted improvements without a complete overhaul of the system. Liability is an important

consideration. Psychiatric Advanced Registered Practitioners should have representation on the review board.

CON: There are not enough community placements available. This bill would only lead to persons not getting out of the hospital when they are ready. Due process would be sacrificed in favor of preventive detention.

**Persons Testifying:** PRO: Kari Burrell, Office of Governor; Tom McBride, Washington Association of Prosecuting Attorneys; Leslie Emerick, Association of Advanced Practice Psychiatric Nurses.

CON: David Lord, Disability Rights Washington; Shankar Narayan, American Civil Liberties Union.