

SENATE BILL REPORT

SHB 2289

As Reported by Senate Committee On:
Human Services & Corrections, February 23, 2018

Title: An act relating to the release and commitment of persons involuntarily committed after the dismissal of a felony.

Brief Description: Concerning the release and commitment of persons involuntarily committed after the dismissal of a felony.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Kilduff, Muri, Jinkins, Fey, Sawyer and Gregerson).

Brief History: Passed House: 2/12/18, 97-1.

Committee Activity: Human Services & Corrections: 2/20/18, 2/23/18 [DP].

Brief Summary of Bill

- Places requirements on a prosecutor who receives notice of the impending release of a state hospital patient who was involuntarily committed after dismissal of a violent felony, to notify the state hospital, patient, and law enforcement officials of the prosecutor's decision whether to refile criminal charges and to not intervene in court to challenge the patient's release.
- Creates a procedure for a prosecutor to petition for a court order requiring submission of a release plan for advisory review by the Public Safety Review Panel pertaining to state hospital patients committed before July 1, 2013, following dismissal of a violent felony.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt and Miloscia.

Staff: Kevin Black (786-7747)

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: Washington's two adult state hospitals, Western State Hospital and Eastern State Hospital, provide involuntary mental health treatment to forensic patients committed pursuant to chapter 10.77 RCW, and civil patients committed pursuant to chapter 71.05 RCW.

Forensic Flip Patients. Certain patients who begin as forensic patients may convert, or flip, to civil patients if they are found incompetent to stand trial pursuant to a criminal case and cannot be restored to competency within the statutory time periods allowed for competency restoration treatment. In this event, the criminal court must dismiss the criminal charges without prejudice and refer the person for civil commitment. A forensic flip patient who was charged with a felony may receive a civil commitment under a special commitment ground that the patient has committed acts constituting a felony and, due to a mental disorder, presents a substantial likelihood of repeating similar acts. To commit a person under this ground, it is necessary to prove by clear and convincing evidence that the person committed the criminal acts charged; however, it is not necessary to prove intent or state of mind as an element of the crime.

Notification and Intervention Rules Applicable to the Release of Felony Forensic Flip Patients. The Involuntary Treatment Act requires notification of the prosecutor in the county of commitment 45 days prior to release whenever a state hospital proposes to release a felony forensic flip patient by allowing the current commitment to expire, or 30 days prior to release whenever the state hospital proposes to release the patient conditionally or unconditionally before the expiration of the current period of commitment. In this latter case, a prosecutor may petition the court within 20 days for a hearing to determine whether the person is to be released, and ask the court to determine whether the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. The committed person must be provided the right to counsel and all other rights as in an involuntary treatment hearing except for the right to a jury trial.

In addition, if the state hospital files a court petition to modify the commitment to include less restrictive alternative treatment, the hospital must serve the prosecutor in the county of commitment and the prosecutor must be entitled to intervene.

If the patient was committed following the dismissal of a sex, violent, or felony harassment offense, the hospital must additionally provide notification 30 days before any conditional release, final release, authorized leave, or transfer to the chief of police and county sheriff of the county where the patient will reside and to the prosecutor of the county of commitment. If requested in writing, the hospital must provide notification to the victim, any testifying witnesses, any other person specified in writing, and the chief of police and county sheriff of the county of commitment.

Felony Forensic Flip Patients Subject to a Special Finding. In 2013, the Legislature passed E2SHB 1114 which created a special designation for felony forensic flip patients when the court makes a special finding that the person committed acts constituting a felony classified as violent. If this finding is made, the patient loses certain procedural rights, such as being prohibited from presenting evidence on their own behalf at a recommitment hearing if the state hospital files a facially sufficient commitment petition, unless the patient first presents

proof through admissible expert opinion that their condition has changed since their last commitment hearing. The standard for commitment and commitment terms are otherwise the same as for other civil patients.

Public Safety Review Panel. In 2010, the Legislature established an independent Public Safety Review Panel (PSRP) consisting of seven members appointed by the Governor for the purpose of advising the courts and the Department of Social and Health Services (DSHS) relating to the release of persons committed under criminally insanity laws. E2SHB 1114 expanded the role of the PSRP to include advice about the release of civil patients subject to the special finding. The members of the PSRP include a psychiatrist, psychologist, representative of the Department of Corrections (DOC), prosecutor, representative of law enforcement, representative who advocates for consumers and families, and representative of criminal defense attorneys. The advice of the PSRP is not legally binding on DSHS or the courts.

Summary of Bill: Provisions are adopted requiring notice to law enforcement personnel when a state hospital proposes to release a felony forensic flip patient who is subject to a special finding under E2SHB 1114. While these provisions are largely duplicative of current law, current law notification requirements are expanded by:

- requiring notification to the sheriff of the county and chief of police of the city in which the person will reside to be provided 45 days prior instead of 30 days prior to an unconditional release at the end of a commitment period; and
- requiring notice to the sheriff of the county where the criminal charges were dismissed when such notice has not been requested in writing, and requiring such notice to be provided 45 days prior instead of 30 days prior to an unconditional release at the end of a commitment period.

Situations in which the prosecuting attorney in the county of commitment is entitled to intervene in court before the release of a felony forensic flip patient who is subject to a special finding under E2SHB 1114 are specified to include unconditional release at the end of a commitment period, in addition to unconditional release before the end of the commitment period under current law.

A prosecutor from the county of commitment who receives notice of the release of a felony forensic flip patient who is subject to a special finding under E2SHB 1114 must provide notice of:

- a decision to not intervene in court to challenge the release of the person, to be provided at the earliest possible date and within 20 days of receiving the notice; and
- whether the prosecutor intends to refile criminal charges upon the person's release.

The prosecutor must provide these notices to the following:

- the state hospital;
- the attorney and the guardian or conservator of the committed person, if any;
- the chief of police of the city and the sheriff of the county where the person will reside; and
- the sheriff of the county of commitment.

Failure of the prosecutor to provide notice of intent to refile criminal charges does not preclude the prosecutor from refiling criminal charges.

If a state hospital proposes to release a felony forensic flip patient who was committed following dismissal of a felony classified as violent prior to July 28, 2013, a prosecuting attorney may file a court petition requesting the court to enter a finding requiring advisory review of the patient's release by the PSRP. The court must enter such a finding if it finds that the patient is a felony forensic flip patient who was committed following dismissal of a felony classified as violent prior to July 28, 2013, and that the patient currently meets inpatient detention criteria by either continuing to present a substantial likelihood of repeating acts similar to the charged felony or to continuing to present a substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court makes this finding, the PSRP must complete its review of the proposed release within seven days.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: The genesis of this legislation came from a proposed release of a person which could have been dangerous in my district. This situation illustrates tensions and gaps between the criminal justice system and the mental health system. This bill uses three existing tools: notice, prosecutorial intervention, and the PSRP. This will give the prosecutor a stronger voice with the power to intervene. The PSRP cannot weigh in for patients committed before 2013. The original draft was overly broad and has been scaled back. Constitutional rights are important and persons with mental illness deserve treatment. This draft honors constitutional rights by using the clear, cogent, and convincing evidence standard.

CON: It is difficult to get placements for persons in the community. Some of the 1114 patients are committed for shoplift robberies, not violent in reality, and would be very appropriate for adult family homes. Violent offenses should not be lumped in with serious violent offenses.

OTHER: The gap between the civil commitment and incompetent to stand trial standard is a problem, particularly when a violent act has occurred. The PSRP is a good body; but it is just an advisory panel, and it does not require this level of process to access their input. Involuntary commitment is problematic from the standpoint of human rights and civil liberties. If a person has not committed a crime, they should be allowed to be free. If there is a problem, it should be handled through the criminal justice system.

Persons Testifying: PRO: Representative Christine Kilduff, Prime Sponsor.

CON: Kari Reardon, Washington Association of Criminal Defense Lawyers, Washington

Defender Association.

OTHER: Tom McBride, Washington Association of Prosecuting Attorneys; Michael Brunson, citizen.

Persons Signed In To Testify But Not Testifying: No one.