

HOUSE BILL REPORT

HB 1355

As Reported by House Committee On:
Judiciary

Title: An act relating to the authority of the public safety review panel.

Brief Description: Concerning the authority of the public safety review panel.

Sponsors: Representatives Jinkins and Rodne.

Brief History:

Committee Activity:

Judiciary: 1/25/17, 2/2/17 [DPS].

Brief Summary of Substitute Bill

- Provides the Public Safety Review Panel (Panel) with authority to make determinations regarding conditional release, revocation, and review proceedings, as well as temporary leave and furlough, for persons committed or ordered conditionally released after a finding of not guilty by reason of insanity.
- Establishes procedures for conducting Panel hearings, provides rulemaking authority to the Panel, and revises provisions governing operations of the Panel.
- Increases the membership of the Panel to include a community treatment provider with experience treating conditionally released forensic patients.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Hansen, Kirby and Orwall.

Minority Report: Do not pass. Signed by 3 members: Representatives Goodman, Graves and Shea.

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.

Minority Report: Without recommendation. Signed by 2 members: Representatives Haler and Klippert.

Staff: Edie Adams (786-7180).

Background:

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, he or she had a mental disease or defect which affected the defendant to such an extent that either the defendant was unable to perceive the nature or the quality of the act with which the defendant is charged or tell right from wrong with reference to the particular act charged.

A defendant who is found NGRI may be committed to a state hospital 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. If the court finds the person is not a substantial danger to other persons and does not pose a substantial likelihood of committing criminal acts jeopardizing public safety, but that the person is in need of control by the court or other persons or institutions, the court must direct the person's conditional release.

Conditional Release.

A person found NGRI may not be released from the state hospital before the expiration of the person's term of commitment unless ordered by the superior court in the county in which the person was committed. A person found NGRI may petition for conditional release once every six months. The Department of Social and Health Services (Department) must submit this petition to the court with its recommendation concerning the release. The Department may on its own initiate a recommendation to the court that a person be conditionally released. 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 reject the recommendation of the Department only based on substantial evidence.

The court ordering a conditional release must periodically review the case to determine whether the person should continue to be conditionally released. A conditional release order may be modified by the court if the court determines that the person is failing to adhere to the terms and conditions of the conditional release or is in need of additional care and treatment. When a conditionally released person presents a threat to public safety, the Department may take the person into custody, and a court must immediately hold a hearing to determine whether the person's conditional release should be revoked or modified.

Public Safety Review Panel.

A Public Safety Review Panel (Panel) was established in 2010 to independently review and assess the Department's proposals for release or conditional release, furlough, or temporary leave for NGRI cases. The Panel provides written determinations of the public safety risk presented by any release or conditional release recommendation and may offer alternative

recommendations. The Panel's recommendations are submitted to the court with the recommendations of the Department and are provided to the prosecutor and counsel for the committed person.

The Panel consists of the following seven members appointed by the Governor: 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 or a representative of a defender's association. Members of the Panel serve renewable three-year terms.

Summary of Substitute Bill:

The Public Safety Review Panel (Panel) is provided with authority to make determinations regarding conditional release, revocation, and review proceedings, as well as temporary leave and furlough, for persons committed to a state hospital or ordered conditionally released after a finding of not guilty by reason of insanity (NGRI). The court retains jurisdiction over proceedings for the unconditional release of persons found NGRI and committed to the state hospital, and the Panel retains an advisory capacity in these cases.

Conditional Release After a NGRI Finding.

In a criminal case where a person is found NGRI, if the court recommends conditional release, the court must provide a copy of its conditional release order to the Panel within five judicial days. The Panel may modify the release conditions or add additional conditions if appropriate for public safety or the best interests of the defendant.

If the Panel finds that no reasonable release conditions exist that would prevent the defendant from presenting a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, the Panel must state its reasons and refer the case back to the court for further consideration. The court may order the defendant hospitalized in a state hospital or conditionally released pursuant to conditions identified by the court and the Panel. Upon conditional release, the Panel assumes all further jurisdiction over the conditionally released person.

Periodic Examinations.

The Panel must review the progress of each person committed to a hospital or other facility or conditionally released in NGRI cases following receipt of an initial six-month report of the examination of the person's mental condition. After the initial review, the Panel must review each case at least once every two years.

Conditional Release.

An application for conditional release, whether initiated by the committed person or the Department of Social and Health Services (the Department), must be submitted to the Panel along with the Department's release recommendation. Within 30 days, the Panel must schedule a hearing to determine whether the person may be conditionally released without posing a substantial danger to other persons or substantial likelihood of committing criminal

acts jeopardizing public safety or security. The Panel may disapprove the Department's recommendation for conditional release only on the basis of substantial evidence. Additionally, the Panel may modify the terms and conditions on which the person is to be conditionally released. The Panel may not conditionally release or authorize the furlough of a person without a hearing unless the Department has recommended the release or furlough.

The Panel is responsible for periodically reviewing the case of each person conditionally released to determine whether the person should continue to be conditionally released.

Any petition for the modification of the terms of a conditional release must be submitted to and reviewed by the Panel, and the Panel must hold hearings on revocation of a conditional release where the person has been taken into custody because the person poses a threat to public safety.

Furlough or Temporary Leave.

The Panel is given authority to authorize the furlough or conditional release of a person committed following an acquittal by reason of insanity. A prosecutor may seek a temporary restraining order from the Panel to challenge a temporary release of an NGRI-committed person from a treatment facility without the constant accompaniment of facility staff.

Hearings of the Panel.

Panel hearings may be conducted in groups of four members designated by the chair of the Panel. The Panel has authority to issue subpoenas and to compel compliance with its orders. All Panel proceedings, except deliberations, are open to the public and must be held at Western State Hospital or Eastern State Hospital to the extent practical. The Panel may allow a person to appear by video or other telephonic means in cases where the person is not a resident at the facility where the hearing is held. Rulings of the Panel must be considered by the Court of Appeals division with authority over the county of the person's commitment.

Other Provisions.

The membership of the Panel is increased to include a community treatment provider with experience treating conditionally released forensic patients. The terms of Panel members are increased to four years and must be staggered. The Panel may adopt rules necessary to perform its functions. Members of the Panel are not removable except for cause as determined by the Thurston County Superior Court. Members of the Panel are entitled to receive per diem and travel expenses for attending Panel business.

The provisions of this act apply to all commitments after a finding of NGRI that exist before, on, or after the effective date.

Substitute Bill Compared to Original Bill:

Panel membership is increased to include a community treatment provider with experience treating conditionally released forensic patients. A provision indicating the act applies to certain commitments with a special finding under the Involuntary Treatment Act is removed.

Appropriation: None.

Fiscal Note: Requested on January 19, 2017.

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

Staff Summary of Public Testimony:

(In support) Decisions regarding conditional release and conditions of release should be put before the Public Safety Review Panel (Panel), which has subject matter expertise and knowledge of appropriate treatment and supervision options. This will lead to improvements in balancing treatment progress for patients and public safety concerns. It will closely align the folks connected to the support services that are available to the individuals being released. There has not been a divergence between the courts and the Panel on these decisions. The Panel has handled hundreds of cases and achieved a high level of consensus because treatment and safety go hand in hand. Judges may see only one or two of these cases a year. The bill will create efficiency by centralizing hearings at the state hospitals, reducing the costs of transporting patients to hearings and the disruption that causes. The changes in the bill are consistent with the *Ross* decision. The bill will accomplish the policy and purpose behind the legislation that created the Panel.

(Opposed) None.

Persons Testifying: Representative Jinkins, prime sponsor; David Hacket, Public Safety Review Panel; and Jon Tunheim, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.