

HOUSE BILL REPORT

SHB 2289

As Passed House:
February 12, 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:

Committee Activity:

Judiciary: 1/11/18, 1/24/18 [DPS];
Appropriations: 2/3/18, 2/6/18 [DPS(JUDI)].

Floor Activity:

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

Brief Summary of Substitute Bill

- Provides additional notice and review requirements for the release or modification of a commitment order of certain involuntarily detained persons.
- Allows for prosecutorial intervention upon notice of the release of certain involuntarily detained persons.
- Creates a new process by which a prosecuting attorney may petition the court for Public Safety Review Panel review of a release or modification of a commitment order of certain involuntarily detained persons.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Haler, Hansen, Kirby, Klippert, Muri, Orwall and Valdez.

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: Do not pass. Signed by 2 members: Representatives Goodman and Shea.

Staff: Ingrid Lewis (786-7289).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Graves, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Tharinger, Vick, Volz and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Andy Toulon (786-7178).

Background:

Incompetency.

A person is incompetent to stand trial in a criminal case if he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in their own defense. A court may require a competency evaluation of a defendant whenever the issue of competency is raised. A person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

If a person is found incompetent to stand trial, the court must stay the proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency or dismiss the charges without prejudice. If the defendant undergoes restoration treatment but cannot be restored to competency within the designated period, the criminal case must be dismissed without prejudice. A defendant who has a felony charge dismissed is committed to a state hospital for up to 72 hours for an evaluation for civil commitment under the Involuntary Treatment Act (ITA), which sets forth the procedures, rights, and requirements for involuntary civil commitment. At the end of the 72-hour evaluation period, a petition may be filed for up to 180 additional days of treatment.

Grounds and Procedures for Involuntary Commitment Following a Felony Dismissal.

A person who has had felony charges dismissed due to incompetency may be detained for a period of up to 180 days if the petitioner can prove by clear, cogent, and convincing evidence that the person has committed acts constituting a felony and, as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts. If the grounds for commitment have been proven, but treatment less restrictive than detention will be in the best interest of the person or others, the court may order a less restrictive alternative placement for the term of the commitment.

No order under the ITA may exceed 180 days, but commitment may be renewed upon successive petitions and hearings. The grounds for subsequent petitions match those for the

initial petition for commitment, and additional factors are considered in the analysis of likelihood of repeating a similar act, including progress in treatment and public safety. The person may be released prior to the end of the term of commitment if they either no longer meet the commitment criteria of likelihood of harm to self or others, have a grave disability, or there is a less restrictive alternative, or both.

Violent Felonies.

On an initial petition for commitment of a person who has had a violent felony charge dismissed due to incompetency, in addition to the standard criteria for commitment, the court must make a finding as to whether the acts the person committed constitute a violent offense as defined in statute. Legislation passed in 2013 altered the recommitment process for persons with an affirmative special finding.

On subsequent petitions for continued commitment of a person for whom a court has made an affirmative special finding at the initial petition, the person will be committed for up to an additional 180 days upon presentation of prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood that the person will commit acts similar to the criminal behavior. The committed person may challenge the renewed commitment with an admissible expert opinion indicating that the person's condition has changed such that his or her mental disorder or developmental disability no longer presents a substantial likelihood that he or she will commit acts similar to the charged criminal behavior.

A special finding may not be applied retroactively to a person civilly committed prior to the effective date of the 2013 legislation.

The statute addressing the special finding and subsequent commitment was challenged as unconstitutional as a violation of due process, but was recently upheld in 2016.

Notice of the Release or Modification of a Commitment Order of Persons Committed Following a Felony Dismissal.

The superintendent of the state hospital is required to provide advance notice to the prosecuting attorney of the county in which the felony charge was dismissed when the state hospital proposes to release a person, either by declining to refile a new petition for commitment; releasing the person prior to the expiration of the commitment term due to the person no longer meeting clinical criteria for commitment; or by conditionally releasing the person prior to the expiration of the commitment term. The superintendent may also file a petition with the court requesting an order for treatment in a less restrictive alternative. Notice of intention to not repetition for commitment must be provided at least 45 days prior to the expiration of commitment; other notifications must be provided at least 30 days prior to the release or modification date. If the person committed acts constituting a violent felony, sex offense, or felony harassment offense, the state hospital must additionally provide notice to the chief of police of the city in which the person will reside and the sheriff of the county in which the person will reside.

Intervention.

A prosecuting attorney may refile criminal charges if there is a good faith basis to believe that the committed person is competent or can be restored in a reasonable period of time.

A prosecuting attorney may also intervene when the superintendent modifies a commitment order for a person for whom a court has determined committed acts constituting a felony and, as a result of a mental disorder, the person presents a substantial likelihood of repeating similar acts.

Public Safety Review Panel.

The Public Safety Review Panel (PSRP) serves as an advisory body that independently reviews and assesses proposals by the Department of Social and Health Services (DSHS) for conditional release, furlough, temporary leave, and similar changes in commitment status of persons found not guilty by reason of insanity and persons committed under the ITA where the court has made a special finding that the person committed acts constituting a violent offense.

The PSRP provides written determinations of the public safety risk presented by any release recommendation, and may offer alternative recommendations. The PSRP's recommendations are submitted to the court with the DSHS recommendations.

Summary of Substitute Bill:

Where either the court has made a special finding that the felony charge dismissed was a violent felony as defined in statute or an affirmative finding has been made pursuant to the act:

Notice of the Release or Modification of a Commitment Order of Persons Committed Following a Felony Dismissal.

The superintendent of the state hospital must provide notice, concurrent to prosecutorial notice, to the chief of police and the sheriff in the committed person's jurisdiction of residence, as well as to the sheriff of the county in which the felony dismissal occurred, of an impending release (early, final, or conditional) or modification of a commitment order of a person committed under the Involuntary Treatment Act (ITA) following the dismissal of a violent felony offense as defined in statute.

Within 20 days following notification of a person's release or modification of an order, the prosecuting attorney must notify the following of a decision to not intervene and a decision regarding the refiling of charges: the superintendent of the state hospital; the attorney and guardian of the committed person, if any; and law enforcement.

Intervention.

The prosecuting attorney of the county in which the felony dismissal occurred may intervene upon notification that the superintendent of the state hospital does not intend to refile a new petition for commitment.

Public Safety Review Panel.

A prosecuting attorney may petition the court to enter an affirmative finding prior to the release or modification of an order of a person who was civilly committed prior to July 28, 2013, after the dismissal of violent felony as defined in statute. The purpose of the affirmative finding is to determine whether changes in the commitment status must be

reviewed by the Public Safety Review Panel (PSRP). The petition must be filed within seven days of the prosecuting attorney's receipt of notice of the impending release or modification. A copy of the petition must be provided to the superintendent and the committed person's attorney and guardian or conservator, if any. Venue is in the jurisdiction where the person is committed.

An affirmative finding may be made if the court finds by clear, cogent, and convincing evidence that: (1) the charge(s) underlying the finding of incompetence was a violent felony as defined in statute; (2) the person was initially committed prior to July 28, 2013, after the dismissal of a violent felony as defined in statute; and (3) as a result of a mental disorder or developmental disability, the person continues to present a substantial likelihood of repeating similar acts or of committing criminal acts that could jeopardize public safety. If an affirmative finding is made, the PSRP must review the release decision within seven days. The PSRP's review must not delay the committed person's release.

The jurisdiction of the PSRP is expanded to require the panel to provide advice regarding persons committed under the ITA where the court has made an affirmative finding as described above.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 1, 2018.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for sections 2 and 6, relating to the final and conditional release of persons committed under the Involuntary Treatment Act, which take effect April 1, 2018.

Staff Summary of Public Testimony (Judiciary):

(In support) This bill highlights the tensions and gaps that exist between two separate systems: the criminal justice system and the mental health system. As it relates to the proposed release of committed persons with a history of committing violent acts, this legislation proposes using three tools that are currently used in the Involuntary Treatment Act: notice to law enforcement; intervention by the prosecutor; and expansion of the Public Safety Review Panel (PSRP)—a seven-member panel that includes prosecutors, practitioners, law enforcement, and a community member. Enhancements to these tools are used to close those existing gaps, keep communities safe, honor constitutional rights, and ensure that people get necessary treatment.

Counties and cities are well acquainted with the challenges that result when violent offenders are released prematurely and without notice to the communities where they will reside. Certain jurisdictions bear a disproportionate burden when it comes to the release of persons from the state hospital. In residential neighborhoods where there is a high ratio of violent offenders entering adult family homes, the potential for negative outcomes is significant.

The bill requires notification to law enforcement if a prosecuting attorney decides not to intervene. This notification is vital. It allows law enforcement to review cases both internally and with the prosecuting attorney. Law enforcement is then able to do a threat

assessment based on case details, develop a protection plan, and evaluate any other legal steps.

Creating intervention authority for the prosecutors may be duplicating the work done by the Department of Social and Health Services (DSHS) and the Office of the Attorney General and introduces a criminal component to the civil commitment process. The due process concerns relating to House Bill 1114 were recently upheld by the Washington Supreme Court, and the DSHS should continue to refine the current process before adding to it.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) This bill will have a significant impact on the Public Safety Review Panel (PSRP). At this time, the PSRP, which is made up of unpaid volunteers, meets one time per month. The bill would require the PSRP to review additional cases and meet a seven-day turnaround time frame. In addition, the bill will have additional defense costs that are not identified in the fiscal note.

Persons Testifying (Judiciary): Representative Kilduff, prime sponsor; Twyla Williams; John Unfred, City of Lakewood Police Department; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Testifying (Appropriations): Kari Reardon, Washington Association of Criminal Defense Lawyers and Washington Defenders Association.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.