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**SUBSTITUTE SENATE BILL 5304**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Human Services, Reentry & Rehabilitation (originally sponsored by Senators Wilson, C., Dhingra, Darneille, Das, Frockt, Hasegawa, Holy, Lovelett, Nguyen, Rivers, and Wellman)

AN ACT Relating to providing reentry services to persons releasing from state and local institutions; amending RCW 74.09.670, 74.09.555, 9.94.049, 72.09.370, 71.24.470, 71.24.480, and 72.09.270; adding a new section to chapter 71.24 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that the success of persons with behavioral health needs being released from confinement in a prison, jail, juvenile rehabilitation facility, state hospital, and other state and local institutions can be increased with access to continuity of medical assistance, supportive services, and other targeted assistance. The legislature finds that this act provides strategies to prevent interruption of medical assistance benefits and to allow for a seamless transfer between systems of care. The legislature further finds that this act removes stigmatizing language from the program created under RCW 72.09.370 and 71.24.470 and creates a work group to study how to expand the cost-effective strategies of this program to other populations and settings to enhance recovery, reduce recidivism, and improve safety.

**Sec.**  RCW 74.09.670 and 2016 c 154 s 2 are each amended to read as follows:

((~~The~~)) When the authority receives information that a person enrolled in medical assistance is confined in a setting in which federal financial participation is disallowed by the state's agreements with the federal government, the authority ((~~is directed to~~)) shall suspend, rather than terminate, medical assistance benefits ((~~by July 1, 2017,~~)) for these persons, including those who are incarcerated in a correctional institution as defined in RCW 9.94.049, or committed to a state hospital or other treatment facility. ((~~This must include the ability for a~~)) A person who is not currently enrolled in medical assistance must be allowed to apply for medical assistance in suspense status during ((~~incarceration~~)) confinement, and the ability to apply may not depend upon knowledge of the release or discharge date of the person. ((~~The authority must provide a progress report describing program design and a detailed fiscal estimate to the governor and relevant committees of the legislature by December 1, 2016.~~))

**Sec.**  RCW 74.09.555 and 2019 c 325 s 4005 are each amended to read as follows:

(1) The authority shall adopt rules and policies providing that when persons ((~~with a mental disorder,~~)) who were enrolled in medical assistance immediately prior to confinement, or who become enrolled in medical assistance in suspense status during the period of confinement, are released from confinement, their medical assistance coverage ((~~will~~)) shall be fully reinstated ((~~on the day~~)) no later than at the moment of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law. The authority may reinstate medical assistance prior to the day of release provided that no federal funds are expended for any purpose that is not authorized by the state's agreements with the federal government.

(2) The authority, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, the department of children, youth, and families, managed care organizations, and behavioral health administrative services organizations, shall establish procedures for coordination between the authority and department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for ((~~persons who are likely to be eligible for~~)) medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expeditious review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services ((~~immediately upon~~)) before their release from confinement; ((~~and~~))

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons; and

(e) Assuring that notification of the person's release date, current location, and other appropriate information is provided to the person's managed care organization at least 30 days before the person's scheduled release from confinement, or as soon as practicable thereafter.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the authority with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The authority shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) ((~~For purposes of this section, "likely to be eligible" means that a person:~~

~~(a) Was enrolled in medicaid or supplemental security income or the medical care services program immediately before he or she was confined and his or her enrollment was terminated during his or her confinement; or~~

~~(b) Was enrolled in medicaid or supplemental security income or the medical care services program at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.~~

~~(6)~~)) The economic services administration within the department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person ((~~who is likely to be eligible~~)) for medicaid.

NEW SECTION. **Sec.**  (1) The health care authority shall apply for a waiver allowing the state to provide medicaid services to persons who are confined in a correctional institution as defined in RCW 9.94.049 or confined in a state hospital or other treatment facility up to 30 days prior to the person's release or discharge to the community. The purpose is to create continuity of care and provide reentry services.

(2) The health care authority shall consult with the work group established under section 9 of this act about how to optimize the waiver application and its chance of success, including by limiting its scope if deemed appropriate.

(3) The health care authority shall inform the governor and relevant committees of the legislature in writing when the waiver application is submitted and update them as to progress of the waiver at appropriate points.

(4) No provision of this section may be interpreted to require the health care authority to provide medicaid services to persons who are confined in a correctional institution, state hospital, or other treatment facility up to 30 days prior to the person's release or discharge unless the health care authority obtains final approval for its waiver application from the centers for medicare and medicaid services.

**Sec.**  RCW 9.94.049 and 1995 c 314 s 6 are each amended to read as follows:

(1) For the purposes of this chapter, the term "correctional institution" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including state prisons, county and local jails, juvenile detention centers, and other facilities operated by the department of corrections, department of children, youth, and families, or local governmental units primarily for the purposes of punishment, correction, or rehabilitation following conviction or adjudication of a criminal offense.

(2) For the purposes of RCW 9.94.043 and 9.94.045, "state correctional institution" means all state correctional facilities under the supervision of the secretary of the department of corrections used solely for the purpose of confinement of convicted felons.

**Sec.**  RCW 72.09.370 and 2019 c 325 s 5025 are each amended to read as follows:

(1) The ((~~offender~~)) reentry community ((~~safety~~)) services program is established to provide intensive services to ((~~offenders~~)) persons identified under this subsection and to thereby promote successful reentry, public safety, and recovery. The secretary shall identify ((~~offenders~~)) persons in confinement or partial confinement who: (a) Are reasonably believed to ((~~be dangerous~~)) present a danger to themselves or others if released to the community without supportive services; and (b) have a mental disorder. In ((~~determining an offender's dangerousness~~)) evaluating these criteria, the secretary shall consider behavior known to the department and factors, based on research, that are linked to ((~~an increased~~)) risk ((~~for~~)) of dangerousness ((~~of offenders~~)) for persons with mental illnesses within the criminal justice system and shall include consideration of ((~~an offender's~~)) the person's history of substance use disorder or abuse.

(2) Prior to release of ((~~an offender~~)) a person identified under this section, a team consisting of representatives of the department of corrections, the health care authority, and, as necessary, the indeterminate sentence review board, divisions or administrations within the department of social and health services, specifically including the division of developmental disabilities, the appropriate managed care organization ((~~contracted with the health care authority, the appropriate~~)) or behavioral health administrative services organization, and ((~~the~~)) reentry community services providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the ((~~offender~~)) person upon release. In developing the plan, the ((~~offender~~)) person shall be offered assistance in executing a mental health advance directive under chapter 71.32 RCW, after being fully informed of the benefits, scope, and purposes of such directive. The team may include a school district representative for ((~~offenders~~)) persons under the age of ((~~twenty-one~~)) 21. The team shall consult with the ((~~offender's~~)) person's counsel, if any, and, as appropriate, the ((~~offender's~~)) person's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific ((~~offender~~)) person. The team may recommend: (a) That the ((~~offender~~)) person be evaluated by ((~~the~~)) a designated crisis responder, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or substance use disorder or abuse treatment.

(3) Prior to release of ((~~an offender~~)) a person identified under this section, the team shall determine whether or not an evaluation by a designated crisis responder is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate designated crisis responder. The supporting documentation shall include the ((~~offender's~~)) person's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a designated crisis responder is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a designated crisis responder shall occur on the day of release if requested by the team, based upon new information or a change in the ((~~offender's~~)) person's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the designated crisis responder determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the ((~~offender~~)) person only to a state hospital or to a consenting evaluation and treatment facility or secure withdrawal management and stabilization facility. The department shall arrange transportation of the ((~~offender~~)) person to the hospital or facility.

(7) If the designated crisis responder believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the ((~~offender~~)) person to appear at an evaluation and treatment facility or secure withdrawal management and stabilization facility. If a summons is issued, the ((~~offender~~)) person shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified ((~~evaluation and treatment~~)) facility.

(8) The secretary shall adopt rules to implement this section.

**Sec.**  RCW 71.24.470 and 2019 c 325 s 1030 are each amended to read as follows:

(1) The director shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the director deems necessary to assist ((~~offenders~~)) persons identified under RCW 72.09.370 for participation in the ((~~offender~~)) reentry community ((~~safety~~)) services program. The contracts may be with any qualified and appropriate entities.

(2) The case manager has the authority to assist these ((~~offenders~~)) persons in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, assistance obtaining substance use disorder treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, peer services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the priorities, terms, or conditions in the appropriations act established pursuant to RCW 71.24.035.

(4) The ((~~offender~~)) reentry community ((~~safety~~)) services program was formerly known as the community integration assistance program.

**Sec.**  RCW 71.24.480 and 2019 c 325 s 1031 are each amended to read as follows:

(1) A licensed or certified behavioral health agency acting in the course of the ((~~provider's~~)) agency's duties under this chapter((~~, is~~)) and its individual employees are not liable for civil damages resulting from the injury or death of another caused by a participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program who is a client of the ((~~provider or organization~~)) agency, unless the act or omission of the ((~~provider or organization~~)) agency or employee constitutes:

(a) Gross negligence;

(b) Willful or wanton misconduct; or

(c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed or certified behavioral health agency shall report ((~~an offender's~~)) a reentry community services program participant's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed or certified behavioral health agency's mere act of treating a participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program is not negligence. Nothing in this subsection alters the licensed or certified behavioral health agency's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed or certified behavioral health agencies and their employees and does not apply to conduct of the state.

(5) For purposes of this section, "participant in the ((~~offender~~)) reentry community ((~~safety~~)) services program" means a person who has been identified under RCW 72.09.370 as ((~~an offender~~)) a person who: (a) Is reasonably believed to ((~~be dangerous~~)) present a danger to himself or herself or others if released to the community without supportive services; and (b) has a mental disorder.

NEW SECTION. **Sec.**  A new section is added to chapter 71.24 RCW to read as follows:

(1) The authority shall convene a reentry services work group to consider ways to improve reentry services for persons with an identified behavioral health services need. The work group shall:

(a) Advise the authority on its waiver application under section 6 of this act;

(b) Develop a plan to assure notifications of the person's release date, current location, and other appropriate information are provided to the person's managed care organization at least 30 days before the person's scheduled release from confinement, or as soon as practicable thereafter, in accordance with RCW 74.09.555;

(c) Consider the value of expanding, replicating, or adapting the essential elements of the reentry community services program under RCW 72.09.370 and 71.24.470 to benefit new populations, such as:

(i) A larger group of incarcerated persons in the department of corrections than those who currently have the opportunity to participate;

(ii) State hospital patients committed under criminal insanity laws under chapter 10.77 RCW;

(iii) Involuntary treatment patients committed under chapter 71.05 RCW;

(iv) Persons committed to juvenile rehabilitation;

(v) Persons confined in jail; and

(vi) Other populations recommended by the work group;

(d) Consider whether modifications should be made to the reentry community services program;

(e) Identify potential costs and savings for the state and local governments which could be realized through the use of telehealth technology to provide mental and behavioral health services, expansion or replication of the reentry community services program, or other reentry programs which are supported by evidence;

(f) Consider the sustainability of reentry or diversion services provided by pilot programs funded by contempt fines in *Trueblood, et al., v. Washington State DSHS*, No. 15-35462;

(g) Recommend a means of funding expanded reentry services; and

(h) Consider incorporation of peer services into the reentry community services programs.

(2) The authority shall invite participation in the work group by stakeholders including but not limited to representatives from: Disability rights Washington; behavioral health advocacy organizations; behavioral health peers; reentry community services providers; community behavioral health agencies; advocates for persons with developmental disabilities; the department of corrections; the department of children, youth, and families; the Washington association of sheriffs and police chiefs; prosecutors; defense attorneys; the Washington state association of counties; King county behavioral health and recovery division; the department of social and health services; state hospital employees who serve patients committed under chapters 10.77 and 71.05 RCW; the public safety review panel under RCW 10.77.270; managed care organizations; behavioral health administrative services organizations; the Washington statewide reentry council; the Washington state senate; the Washington state house of representatives; and the Washington state institute for public policy.

(3) The work group must provide a progress report to the governor and appropriate committees of the legislature by December 1, 2021, and a final report by December 1, 2022.

NEW SECTION. **Sec.**  By January 1, 2022, the health care authority shall revise its contracts with managed care organizations and behavioral health administrative services organizations to ensure that enough providers are available to provide services to eligible clients through the reentry community services program under RCW 72.09.370 and 71.24.470.

NEW SECTION. **Sec.**  The Washington state institute for public policy shall update its previous evaluations of the reentry community services program under RCW 72.09.370 and 71.24.470, and broaden its cost-benefit analysis to include impacts on the use of public services, and other factors. The institute shall collaborate with the work group established under section 9 of this act to determine research parameters and help the work group answer additional research questions including, but not limited to, the potential cost, benefit, and risks involved in expanding or replicating the reentry community services program; and what modifications to the program are most likely to prove advantageous based on the current state of knowledge about evidence-based, research-based, and promising programs. The department of corrections, health care authority, administrative office of the courts, King county, and department of social and health services must cooperate with the institute to facilitate access to data or other resources necessary to complete this work. The institute must provide a preliminary report by December 1, 2021, and a final report by November 1, 2022, to the governor and relevant committees of the legislature.

**Sec.**  RCW 72.09.270 and 2008 c 231 s 48 are each amended to read as follows:

(1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every ((~~offender~~)) person who is committed to the jurisdiction of the department except:

(a) ((~~Offenders~~)) Persons who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) ((~~Offenders~~)) Persons who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all ((~~offenders~~)) persons using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each ((~~offender~~)) person. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the ((~~offender~~)) person, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than ((~~forty-five~~)) 45 days of being sentenced to the jurisdiction of the department of corrections.

(b) The ((~~offender's~~)) person's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than ((~~sixty~~)) 60 days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the ((~~offender's~~)) person's children and family;

(b) An individualized portfolio for each ((~~offender~~)) person that includes the ((~~offender's~~)) person's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the ((~~offender~~)) person during the period of incarceration through reentry into the community that addresses the needs of the ((~~offender~~)) person including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any ((~~offender~~)) person, the department shall:

(i) Evaluate the ((~~offender's~~)) person's needs and, to the extent possible, connect the ((~~offender~~)) person with existing services and resources that meet those needs; and

(ii) Connect the ((~~offender~~)) person with a community justice center and/or community transition coordination network in the area in which the ((~~offender~~)) person will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in ((~~an offender's~~)) a person's individual reentry plan, the department shall maximize the period of partial confinement for the ((~~offender~~)) person as allowed pursuant to RCW 9.94A.728 to facilitate the ((~~offender's~~)) person's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the ((~~offender's~~)) person's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for ((~~an offender~~)) a person released to community custody, the department may ((~~not~~)) approve a residence location that is not in the ((~~offender's~~)) person's county of origin ((~~unless it is determined by the~~)) if the department determines that the ((~~offender's return to his or her county of origin would be inappropriate considering~~)) residence location would be appropriate based on any court-ordered condition of the ((~~offender's~~)) person's sentence, victim safety concerns, ((~~negative influences on the offender in the community, or the~~)) and factors that increase opportunities for successful reentry and long-term support including, but not limited to, location of family or other sponsoring persons or organizations that will support the ((~~offender~~)) person, availability of appropriate programming or treatment, and access to housing, employment, and prosocial influences on the person in the community.

(b) In implementing the provisions of this subsection, the department shall approve residence locations in a manner that will not cause any one county to be disproportionately impacted.

(c) If the ((~~offender~~)) person is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the ((~~offender~~)) person is placed with a written explanation.

((~~(c)~~)) (d)(i) For purposes of this section, except as provided in (d)(ii) of this subsection, the ((~~offender's~~)) person's county of origin means the county of the ((~~offender's~~)) person's residence at the time of the person's first felony conviction in Washington state.

(ii) If the person is a homeless person as defined in RCW 43.185C.010, or the person's residence is unknown, then the person's county of origin means the county of the person's first felony conviction in Washington state.

(9) Nothing in this section creates a vested right in programming, education, or other services.

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