
Civil Rights & Judiciary Committee

SSB 5415

Brief Description: Concerning public defense services for persons committed as not guilty by reason of insanity.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Trudeau, Pedersen, Dhingra, Saldaña, Valdez and Wilson, C.).

Brief Summary of Substitute Bill

- Transfers responsibility to provide representation for persons not guilty by reason of insanity and committed to state psychiatric care to the Office of Public Defense (OPD).
- Directs the OPD to contract with attorneys and other entities for legal representation for such persons throughout their term of commitment.

Hearing Date: 3/15/23

Staff: Matt Sterling (786-7289).

Background:

Acquittal by Reason of Insanity.

A person is not guilty by reason of insanity (NGRI) of a criminal offense if, at the time of the act, as a result of a mental disease or defect, the person was unable to perceive the nature and quality of the act or unable to tell right from wrong.

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 presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, and there is no less restrictive treatment than detention in a state hospital. The term of commitment may not exceed the

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maximum sentence for the offense for which the defendant was acquitted by reason of insanity.

Commitment to a State Facility.

A person committed by reason of insanity may apply for conditional release to the superior court of the county of acquittal no more frequently than once every six months. The person's application for conditional release must be reviewed by the Department of Social and Health Services (DSHS) and the Public Safety Review Panel which provides the court with recommendations about release. The court must determine whether the person may be released conditionally to less restrictive alternative treatment under the supervision of a multidisciplinary transition team without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

A person acquitted by reason of insanity who obtains conditional release to the community may apply for final release. To order final release, the court must find that the person no longer has a mental disease or defect that will pose a substantial danger to other persons or cause the person to commit criminal acts that jeopardize public safety or security.

Office of Public Defense.

The Office of Public Defense (OPD) is an independent office in the judicial branch of government established to implement the constitutional and statutory guarantees of counsel and ensure the effective and efficient delivery of indigent defense services that are funded by the state. The OPD contracts with attorneys, local governments, and law firms to provide representation for indigent client appeals, indigent parents in dependency cases, persons committed as sexually violent predators, and initial consultations for youth who are stopped or arrested by law enforcement.

The OPD was directed by proviso in the 2022 Supplemental State Operating Budget to develop a proposal for the OPD to assume statewide administration of legal defense services for indigent persons who are involved in proceedings for post-commitment individuals who are acquitted by reason of insanity. The OPD report was published on December 8, 2022.

Summary of Bill:

Office of Public Defense.

The OPD must administer all state-funded services related to representation of indigent persons who are acquitted by reason of insanity and committed to state psychiatric care. The OPD must contract with lawyers to provide the representation throughout the term of commitment, including any periods of conditional release until legal termination of commitment and final unconditional release, either directly or through local governments or nongovernment organizations.

The definition of indigent for the purpose of NGRI persons is updated to include anyone who receives public assistance, is involuntarily committed to a public health facility, receives an annual income of less than or equal to 125 percent of the federal poverty level, or has insufficient

funds available to pay any amount for retention of counsel.

The OPD's responsibilities in administering post-commitment NGRI public defense services include:

- establishing annual contract fees for public defense legal services within amounts appropriated;
- contracting with individual attorneys, government agencies, and nongovernment organizations who provide indigent representation;
- establishing office policies and procedures for the payment of expert, professional, litigation and investigation costs;
- reviewing and analyzing existing caseload standards and updating the standards as necessary; and
- periodically submitting reports regarding the program and any necessary policy changes.

The OPD is required to assist indigent post-commitment NGRI patients through the provision of counsel to represent the patient throughout their term of commitment and in obtaining qualified experts or professional services for an examination or evaluation:

- anytime a conditional release is being considered, modified, or revoked for increased privileges during a conditional release; and
- for release when the Secretary of the DSHS believes there are reasonable grounds for the patient's discharge.

Notice Provided to the Office of Public Defense.

The court must notify the OPD of the need for representation at the time an individual is acquitted by reason of insanity and committed to state psychiatric care. An expert or professional person who is committed to state psychiatric care for NGRI is compensated by the OPD. The DSHS must notify the attorney of record of a person who is NGRI and committed to a state psychiatric facility if the person escapes or disappears from conditional release or when a person on conditional release is detained on the grounds they are failing to adhere to the conditions of release.

Appropriation: None.

Fiscal Note: Available.

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