

# SENATE BILL REPORT

## SB 6295

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As of January 26, 2024

**Title:** An act relating to creating a path to recovery for high users of behavioral health crisis and criminal justice systems.

**Brief Description:** Creating a path to recovery for high users of behavioral health crisis and criminal justice systems.

**Sponsors:** Senators Dhingra, Gildon, Kuderer, Nobles and Wagoner.

**Brief History:**

**Committee Activity:** Health & Long Term Care: 1/26/24.

**Brief Summary of Bill**

- Requires the Department of Social and Health Services to provide supplemental enhanced resources to a person discharging from involuntary commitment at a psychiatric facility after dismissal of a criminal case based on incompetency to stand trial, in collaboration with other entities.
- Requires behavioral health administrative services organizations (BH-ASOs) to provide wraparound services for persons in the community with a history of involvement with the forensic psychiatric system if the BH-ASO is not able to refer the person to a specialty service.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** Kevin Black (786-7747)

**Background:** Forensic Commitment Based on Incompetency to Stand Trial. A person charged with a crime has the right to be competent to stand trial during criminal proceedings. A person is incompetent to stand trial when, due to a mental disorder, the

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person does not have the present ability to understand the nature of the criminal charges against them or to effectively assist in their defense. If a court finds that a charged person is incompetent to stand trial, the person may qualify for one or more periods of competency restoration treatment designed to abate the effects of the person's mental disorder on the criminal proceeding and render the person amenable to trial. If authorized periods of competency restoration treatment are exhausted and the court finds that the person remains incompetent to stand trial, the court must dismiss the charge or charges without prejudice and, if at least one of the dismissed charges was a felony, serious misdemeanor, or serious gross misdemeanor, commit the defendant for evaluation for forensic commitment for involuntary treatment at a facility designated by the Department of Social and Health Services (DSHS).

Trueblood v. The Department of Social and Health Services. *Trueblood v. DSHS* is a case in federal court relating to wait times for forensic psychiatric services for persons who are charged with crimes, incarcerated pre-trial, and alleged to be incompetent to stand trial. Washington State was found liable for violating the constitutional rights of these defendants in 2015, and starting in 2017 was ordered to pay contempt of court penalties for failing to provide timely competency to stand trial services to class members. A settlement agreement was entered into in 2018 in which certain contempt fines would be suspended in exchange for specific state actions for the benefit of class members.

The Forensic Projects for Assistance in Transition From Homelessness Program. The Forensic Projects for Assistance in Transition From Homelessness program (FPATH) is an adaptation of a low-barrier, high needs housing program which has been designed for individuals assessed as having a high likelihood of future involvement with the forensic psychiatric system, as evidenced by past involvement with the system. As a condition of the *Trueblood* settlement, the Health Care Authority (HCA) has implemented FPATH by contracting with multidisciplinary teams in certain regions of the state specified by the settlement agreement. As of 2024, these regions include the counties of Clallam, Clark, Jefferson, King, Kitsap, Mason, Pierce, Skamania, Spokane, and Thurston. Entities including Medicaid managed care organizations (MCOs) and behavioral health administrative services organizations (BH-ASOs) in other regions receive a monthly notice identifying individuals in their communities who are evaluated as being high risk for future involvement with the forensic psychiatric system but do not have FPATH teams in their jurisdictions to provide intensive services to these individuals.

Behavioral Health Administrative Services Organizations. A BH-ASO is an entity contracted with the Health Care Authority (HCA) to administer behavioral health services using state funds within a regional service area, emphasizing services which are not eligible for federal financial participation under the state Medicaid program, and also services included within the state Medicaid program for individuals who do not qualify for Medicaid enrollment. BH-ASOs oversee regional crisis lines and designated crisis responders (DCRs), which jointly provide the portals to the involuntary commitment system. BH-ASOs descend from regional support networks and behavioral health

organizations which were local behavioral health networks operated by county authorities, and operate within the ten regional service areas. The county authorities within each of the regional service areas have the right of first refusal to administer the BH-ASO. County authorities administer the BH-ASO, either directly or through a joint operating agreement in multi-county regions, in seven of the ten BH-ASOs. HCA has contracted with a private company, Carelon Behavioral Health, to administer the BH-ASOs in the remaining three regions.

Designated Crisis Responders. A DCR is a mental health professional designated by the BH-ASO within each regional service area to evaluate persons in the community who are experiencing a behavioral health crisis to determine if they are eligible for civil commitment on the basis that the person is refusing voluntary psychiatric treatment and have a mental disorder which causes them to present a likelihood of serious harm or to be gravely disabled. DCRs also provide short-term stabilization services and will refer a person to community resources when detention for civil commitment is not appropriate.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** DSHS must collaborate with HCA, MCOs, and BH-ASOs within each regional services area to ensure that persons being discharged from involuntary commitment following dismissal of criminal charges based on incompetency to stand trial have access to supplemental enhanced resources in the form of:

- a multidisciplinary team consisting of, at a minimum, a prescriber, substance use disorder professional, mental health professional, low-caseload case manager, and occupational therapist; and
- housing assistance, which may include housing vouchers if supportive housing is not available.

The multidisciplinary team must persist for at least six months following discharge and until the person is able to meet their daily needs and is assessed as stable.

A BH-ASO which is alerted by a DCR that the DCR has encountered a person who has had three or more criminal cases within the last three years where competency to stand trial was raised or in which the cases were dismissed due to a finding of incompetence to stand trial must:

- coordinate a warm handoff for the individual to the FPATH program; or
- if an FPATH program is not available, establish wraparound services for the person through a high acuity multidisciplinary team providing access to, at a minimum, a prescriber, substance use disorder professional, mental health professional, low-caseload case manager, occupational therapist; and housing, which may include housing vouchers if supportive housing is not available. The multidisciplinary team must persist for at least six months and until the person is able to meet their daily needs and is assessed as stable.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2024.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony On Proposed Substitute:** PRO: This bill attempts to get upstream and stop the flow of individuals becoming *Trueblood* class members. We want people to stabilize in the community. Currently 30 percent of *Trueblood* class members are repeat individuals. We must provide care based on the client's needs, not just what they are eligible for. This is an approach we should use for more people. We support the concept behind this bill to serve frequent utilizers of behavioral health services, placing emphasis on the need for better coordination on the regional level. There are some details to flesh out around information supplied to BH-ASOs. Without new, dedicated funding in this area it is not tenable for BH-ASOs to do this with existing resources. A regional approach is best when needing to integrate care, especially in rural communities where resources are scarce. Flexibility is needed. Great Rivers BH-ASO currently doesn't have any funding for these kinds of services. DCRs do not have access to competency evaluations completed for individuals in regions outside our own.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Brad Banks, Behavioral Health Administrative Services Organizations; Trinidad Medina, Great Rivers BH-ASO.

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