

SENATE BILL REPORT

SB 5278

As of January 31, 2017

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: Senators Padden, Pedersen and Kuderer.

Brief History:

Committee Activity: Law & Justice: 1/24/17.

Brief Summary of Bill

- Transfers jurisdiction for the conditional release of persons found not guilty by reason of insanity (NGRI) and committed to a state hospital from the court to the public safety review panel (PSRP).
- Authorizes the PSRP to review conditional release decisions for persons found NGRI and for whom the court finds are not a danger to public safety requiring commitment to a state hospital.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: A defendant is NGRI if a judge or jury finds that at the time of the commission of the offense, as a result of a mental disease or defect, the mind of the defendant was affected to the extent that the defendant was unable to perceive the nature and quality of the act with which the defendant is charged, or the defendant was unable to tell right from wrong with respect to the particular act charged. A defendant who is found NGRI may be committed for treatment at one of Washington's two state hospitals 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. Alternatively, if the court finds the person is not a substantial danger to other persons or of committing other criminal acts jeopardizing public safety, the court may direct the person's conditional release.

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.

A person found NGRI and committed to a state hospital may not be released before the expiration of the person's term of commitment without leave of the superior court in the county in which the person was committed. A person found NGRI may petition for conditional release or final release once every six months. The Department of Social and Health Services (DSHS) may also submit its own petition if it believes conditional release or final release is appropriate and the person has not submitted their own petition. DSHS must submit a petition to the court with its recommendation concerning the release.

An independent public safety review panel was established in 2010 to review DSHS's proposals for conditional release, furlough, temporary leaves, or movement around the grounds concerning persons found NGRI. The panel must consist of seven members appointed by the Governor, including a psychiatrist, a psychologist, a representative of the Department of Corrections (DOC), a prosecutor, a law enforcement representative, and a consumer and family advocate representative. The panel must complete an independent assessment and provide a written determination of the public safety risk presented by any conditional release recommended by DSHS, and may provide an alternative recommendation. The panel's recommendation must be submitted to the court with the DSHS assessment. 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 only reject the recommendation of DSHS based on substantial evidence.

Any change in the mental health of a person found NGRI who has been conditionally released which may cause the person to become a danger to public safety must be reported to the court. Periodic supervision reports regarding a person found NGRI on conditional release must include information about all arrests, new criminal charges filed, or changes in mental health status. The court must schedule a revocation hearing for a person found NGRI on conditional release who has been returned to the hospital within 30 days.

Summary of Bill: Within five days of conditionally releasing a defendant found NGRI and not committed to a state hospital, the court must provide a copy of the conditional release order to the PSRP. The PSRP may modify or add to the release conditions. If the PSRP finds no reasonable release conditions exist that will prevent the person from presenting a substantial danger to other persons or a substantial likelihood of committing criminal acts that will jeopardize public safety, the PSRP shall state its reasons and refer the case back to court for further consideration. The court may order the person to the state hospital or conditionally release the person pursuant to conditions identified by the court and the PSRP.

The PSRP shall review the progress of each person found NGRI and committed to a state hospital or conditionally released upon receipt of the initial six-month report and thereafter at least once every two years. An application for conditional release, whether initiated by the committed person or DSHS, must be submitted to the PSRP along with DSHS' release recommendation. The PSRP must schedule a hearing within 30 days of receipt of the application. After hearing, the PSRP may disapprove DSHS' release recommendation for the committed person only on the basis of substantial evidence. The PSRP may modify or add to the suggested terms of release. The PSRP may not, without a hearing, conditionally release a committed person unless DSHS has recommended the release. A prosecuting attorney may

seek a temporary restraining order from the PSRP if notified that a person found NGRI and committed to the state hospital will be temporarily released.

Each person conditionally released by the PSRP shall have their case reviewed by the PSRP no later than one year after release and at least every two years thereafter. Any person monitoring the person's release, DSHS, or the prosecuting attorney may petition the PSRP to modify the terms of conditional release if there is reason to believe the released person is failing to adhere to the terms of conditional release. The person may be immediately taken into custody, upon which the PSRP shall promptly schedule a hearing.

The court retains jurisdiction for the unconditional release of persons found NGRI and committed to the state hospital.

Any appeal from a ruling of the PSRP shall be considered by the Washington State Court of Appeals.

The PSRP may adopt procedural and other rules necessary to perform its functions. Hearings of the PSRP may be conducted in groups of four members designated by the panel chair. The PSRP shall have the authority to issue subpoenas and to compel compliance with its orders. PSRP members are not removable except for cause as determined by the Thurston County Superior Court. All panel proceedings, except deliberations, are open to the public and to the extent practical, shall be held at Western State Hospital or Eastern State Hospital. The PSRP may authorize a person to appear by video or other telephonic means. Each member of the panel shall receive per diem and travel expenses for attending panel business.

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

Appropriation: None.

Fiscal Note: Requested on January 19, 2017.

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: PRO: Since 2010, the PSRP has made great progress in balancing between good patient treatment and community safety. Good expectations serve public safety and the patient. The PSRP has reached a point as an advisory committee where continuing balance is increasingly difficult and the time has come to provide limited quasi-judicial authority. There are four reasons that support this shift. (1) It places the difficult questions of release before a panel with deep background in addressing the conditions and treatment needs of patients. (2) It provides for the efficient use of resources. Currently a person found NGRI has to be transported all over the state to their original court of jurisdiction. This creates issues with the court calendar, transportation, etc. These hearings could be conducted at hospital where the person is located. (3) It is consistent with the Ross settlement, requiring hearings to be held on a regular basis. (4) It strikes an appropriate balance between public safety and patient treatment; moving patients through the system at

an appropriate rate for the individual person. The PSRP has developed expertise by seeing a large number of these cases over the years. By the same token, the PSRP is in a unique position to recognize when the person needs to come back for a tune-up or additional treatment to ensure patient success. Constituents have understandable concerns about releases from Western State Hospital. This bill addresses those concerns. The PSRP will provide transparency in the release process and put further emphasis on public safety.

CON: This bill impedes implementation of the Ross settlement and acts to erode the judicial process by substituting PSRP for the courts. It is not appropriate for PSRP to override court decisions. The Ross lawsuit in 2010 resulted from walkaways at state hospitals and a concern for public safety. There were also complaints from persons who had been found NGRI. They were not getting access to treatment in order to get out and no conditional release opportunities. Public safety is not served when people are released outright and gradual release is generally better for public safety. DSHS commissioned a report—Groundswell Report—for the review of the NGRI treatment process. It found that the process for transition was slow and punitive in existence. The August 26th settlement spells out an efficient and effective process for people to move through conditional release and transition to the community in a safe manner. It protects the rights of persons found NGRI, ensures an efficient process, and ensures public safety. That settlement also creates a risk review board internal to the hospital and requires a forensic risk assessment for the patient. These conditions are currently being implemented. This bill would impede that process.

Persons Testifying: PRO: David Hackett, King County Prosecutors Office, Public Safety Review Panel; Mark Lindquist, Pierce County Prosecuting Attorney.

CON: David Lord, Disability Rights Washington .

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