
Civil Rights & Judiciary Committee

E2SSB 5071

Brief Description: Creating transition teams to assist specified persons under civil commitment.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Darneille, Das, Hunt, Kuderer, Nguyen and Wilson, C.).

Brief Summary of Engrossed Second Substitute Bill

- Creates transition teams to support the release of persons found not guilty by reason of insanity and certain persons who have been civilly committed following dismissal of a violent felony based on incompetence to stand trial from the state hospitals.
- Extends minimum requirements for less restrictive alternative treatment to persons committed pursuant to criminal insanity laws which are established in law for other committed persons.
- Imposes requirements on the Health Care Authority and behavioral health administrative organizations related to less restrictive alternative treatment orders.

Hearing Date: 3/23/21

Staff: Ingrid Lewis (786-7289).

Background:

A person may be committed to involuntary treatment for a behavioral health disorder under a variety of circumstances pursuant to civil and forensic commitment statutes.

A forensic system commitment may be for: (1) an evaluation to determine whether or not a person is competent to stand trial; (2) for restoration of a person's competency so that the person

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may stand trial; or (3) as a result of a finding of not guilty by reason of insanity (NGRI).

Not Guilty By Reason of Insanity.

A person is NGRI of a criminal offense if, at the time of the act, as a result of a mental disease or defect, he or she 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 maximum sentence for the offense for which the defendant was acquitted by reason of insanity.

Competency.

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 person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

If a defendant charged with a felony is not restored to competency at the end of the felony competency restoration period, then the court must dismiss the charges without prejudice and refer the defendant to a designated crisis responder for a civil commitment evaluation pursuant to the Involuntary Treatment Act (ITA). A person who has had felony charges dismissed due to incompetency may be committed for a period of up to 180 days if the person presents a substantial likelihood of repeating similar acts as a result of a mental disorder. For crimes that constitute a violent felony as defined in statute, an affirmative special finding may be made that qualifies the person for additional terms of supervision and commitment.

Conditional Release.

A person found NGRI may petition for conditional release once every six months. An application for conditional release, whether initiated by the committed person or the Department of Social and Health Services (DSHS), must be forwarded to the superior court of the county which ordered the person's commitment. The court may reject the recommendation of the DSHS only based on substantial evidence that the person continues to meet the criteria for inpatient treatment. When granting an application for conditional release, a court may require the person to be supervised by a community corrections officer.

A person committed under the ITA where the court has made a special finding that the person committed acts constituting a violent offense may be conditionally released pursuant to a Less Restrictive Alternative (LRA) treatment order.

The LRA treatment for individuals committed under the ITA contains at a minimum:

- assignment of a care coordinator;
- an intake evaluation with the provider of LRA treatment;
- a psychiatric evaluation;
- a schedule of regular contacts with the treatment provider;
- a transition plan addressing access to continued services at the expiration of the order;
- a crisis plan; and
- notification to the care coordinator when the person does not substantially comply with treatment requirements.

No such requirements are applied to the conditional release of persons found NGRI.

Conditional release and LRA orders may be modified or revoked if the court determines that the person is failing to adhere to the terms and conditions of the release or is in need of additional care and treatment.

For both persons found NGRI and persons committed under the ITA where the court has made a special finding, conditional release petitions and the DSHS release recommendations must be forwarded to the Public Safety Review Panel, which is an oversight board that is charged with issuing advisory opinions to the court concerning release recommendations by the DSHS.

Disclosure of Health Information.

The Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or a written authorization by the patient. Some exceptions include: disclosure for the provision of health care; public health and law enforcement activities as required by law; and judicial proceedings.

State Agency Oversight of the Behavioral Health System.

The DSHS oversees inpatient treatment for adults who receive involuntary commitment through the criminal justice and civil system at one of two state hospitals: Western State Hospital; and Eastern State Hospital.

The Health Care Authority (HCA) contracts with behavioral health administrative services organizations (BHASO) and managed care organizations (MCO) to administer certain behavioral health services, including administration of the ITA, for all individuals within a regional service area.

Summary of Engrossed Second Substitute Bill:

Conditional Release of Persons Found NGRI.

For persons found NGRI, conditional release must begin on admission and be facilitated by the state hospital liaison for the person's MCO or BHASO, in collaboration with the DSHS. The person or DSHS may make a motion for limited conditional release if there is insufficient evidence to support a full conditional release, but the person would benefit from the opportunity to exercise increased privileges and can do so under the supervision of the DSHS without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

The LRA treatment requirements are imposed on the conditional release of persons found NGRI, and minimum requirements for an order of conditional release are increased to include minimum components similar to those applicable to persons ordered to receive LRA treatment.

Multidisciplinary Transition Teams.

For both persons found NGRI and persons committed under the ITA where the court has made a special finding, conditional release and LRA treatment orders must include supervision by a multidisciplinary transition team, including a specially trained community corrections officer and representatives of the DSHS and the community behavioral health agency treatment provider. Representation from a treatment provider may be omitted if the order does not require participation in behavioral health treatment, and the appointment of a community corrections officer may be omitted if the court makes a special finding that appointment would not facilitate the success or safety of the person or the public.

The role of the transition team is to facilitate the success of the person by monitoring progress in treatment and compliance with court-ordered conditions, and problem-solving extra support the person may need or circumstances that may threaten either the person or the public's safety. The team shall meet according to a schedule developed by the team and communicate as needed if issues arise. The HCA shall coordinate with the DSHS to offer contracts to community behavioral health agencies to support non-Medicaid reimbursable costs associated with participating in transition teams. The HCA may establish requirements, provide technical assistance, and provide training as appropriate and within available resources

The Department of Corrections must collaborate with the DSHS to develop specialized training for community corrections officers appointed to a transition team. A conditional release or LRA order must not be delayed due to a lack of availability of a specially trained community corrections officer; another officer may be appointed if necessary.

Disclosure of Health Information.

Disclosure of protected mental health information may be disclosed by a care coordinator assigned to a person ordered to receive LRA treatment for the purposes of sharing information to parties necessary for the implementation of both civil and forensic mental health proceedings.

Other Provisions.

The BHASOs must provide LRA treatment services to all persons who receive LRA treatment orders who do not have access to health insurance coverage for these services, regardless of whether adequate resources are available to provide the services.

Superior courts must share all involuntary commitment hearing outcome information with their local BHASO, which must track information related to LRA treatment orders and ensure the information is distributed to the appropriate MCO if the person is enrolled in Medicaid.

A court may delay a bail hearing for a defendant at first appearance or arraignment if it determines that a competency evaluation will be requested or ordered for the defendant if the charges are pursued.

The HCA must revise its behavioral health data system for tracking involuntary commitment orders to enable users to distinguish between types of orders.

The provisions of this act apply to persons who are committed for inpatient behavioral health treatment when the law comes into effect.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to prior delayed effective dates, which takes effect July 1, 2026; and sections 12 and 14, relating to prior delayed effective dates, which take effect July 1, 2022 .