SENATE BILL REPORT
SB 5071

As of January 15, 2021

Title: An act relating to creating transition teams to assist specified persons under civil commitment.

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

Sponsors: Senators Dhingra, Darneille, Das, Hunt, Kuderer, Nguyen and Wilson, C..

Brief History:
Committee Activity: Health & Long Term Care: 1/13/21 [w/oRec-BH].
Behavioral Health Subcommittee to Health & Long Term Care: 1/15/21.

Brief Summary of Bill

- Requires the appointment of a transition team to assist certain civil commitment patients being released to the community following the dismissal of criminal charges, consisting of a care coordinator, a representative of the Department of Social and Health Services, and a specially-trained community corrections officer.
- Includes persons acquitted by reason of insanity in minimum requirements established in law for other persons ordered to receive court-ordered outpatient behavioral health treatment.
- Modifies requirements for court-ordered outpatient behavioral health treatment by allowing for inclusion of a substance use disorder evaluation and permitting certain disclosures by the care coordinator to facilitate involuntary treatment processes.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Staff: Kevin Black (786-7747)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Involuntary Commitment for Behavioral Health Treatment. Involuntary commitment occurs when a court orders a person to undergo a period of involuntary behavioral health treatment. Involuntary treatment may occur in an inpatient setting, or it may consist of a period of outpatient treatment, which is known as less restrictive alternative (LRA) treatment. Washington law refers to orders requiring LRA treatment as LRA treatment orders, conditional release orders, or assisted outpatient behavioral health treatment orders.

Reasons for Involuntary Commitment. A person may receive an involuntary commitment order through a civil court case or a criminal court case. An involuntary commitment order arises through a civil court case when a designated crisis responder (DCR) determines, following investigation, that a person who is refusing voluntary behavioral health treatment presents a likelihood of serious harm or is gravely disabled due to a behavioral health disorder. The DCR may detain the person up to 120 hours in a community treatment facility. The treatment facility may subsequently petition for a court order requiring continuing involuntary treatment for defined periods if certain legal criteria are met.

An involuntary commitment order may arise through a criminal court case in one of two ways:

- a person may be acquitted of a criminal charge as not guilty by reason of insanity, and then subsequently found by a court or jury to present a substantial danger to other persons unless kept under further control by the court or other persons or institutions, or be found to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions; or
- a person may be found incompetent to stand trial and referred for civil commitment after the statutory time period allotted for competency restoration treatment has expired without a finding of restoration, with special grounds for civil commitment being available on the basis of proof that the person has committed acts constituting a felony, and as a result of a behavioral health disorder presents a substantial likelihood of repeating similar criminal acts. If the court makes a special finding that the person committed acts constituting a felony that is classified as violent under state law, the person will qualify for additional terms of supervision including oversight by an board known as the Public Safety Review Panel (PSRP), which is charged with issuing an advisory opinion to the courts concerning release recommendations by the Department of Social and Health Services (DSHS).

DSHS oversees inpatient treatment for adults who receive involuntary commitment through criminal court cases at one of two state hospitals: Western State Hospital and Eastern State Hospital.

Minimum Components of Less Restrictive Alternative Treatment. In 2016, the Legislature established mandatory minimum components for a course of LRA treatment. These include:

- assignment of a care coordinator;
- a psychiatric evaluation;
- a schedule of regular contacts with the treatment provider;
- a transition plan;
- an individual crisis plan; and
- notification to the care coordinator when the client does not substantially comply with treatment requirements.

Other optional LRA treatment requirements were specified. These requirements were not applied to persons who are conditionally released after being acquitted as not guilty by reason of insanity.

Summary of Bill: Minimum requirements for an order of conditional release for a person who has been civilly committed following a finding of not guilty by reason of insanity are increased by:

- requiring the appointment of a transition team to assist the person, consisting of a care coordinator, a representative of DSHS, and a specially-trained community corrections officer;
- requiring the court to specify the name of a behavioral health agency responsible for supervising the person's outpatient treatment; and
- requiring the course of outpatient treatment to include minimum components similar to those applicable to persons ordered to receive LRA treatment.

Minimum requirements for an LRA treatment order for a person who has been civilly committed following dismissal of a violent felony charge based on incompetency to stand trial are increased to include appointment of a transition team to assist the person, consisting of a care coordinator, a representative of DSHS, and a specially-trained community corrections officer.

A transition team for a person on an involuntary outpatient behavioral health treatment order must problem solve and consult about day-to-day activities and logistics for the person to facilitate their success on the order and protect the safety of the person and the community. The team must meet on a monthly basis and communicate as needed if issues arise that require immediate attention.

Court-ordered involuntary outpatient behavioral health treatment may include a substance use disorder evaluation instead of, or in addition to, a psychiatric evaluation. The care coordinator may share information with parties as needed to implement the involuntary treatment order.

Appropriation: None.

Fiscal Note: Available.

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: This bill is based on recommendations from the PSRP. It attempts to remove barriers for persons committed at state hospitals–to make sure there is consistency and transition planning. We should remove the burden of developing a release plan from defense attorneys and place it on DSHS to coordinate with community providers to transition individuals in an efficient and effective manner. So many patients are unable to be discharged today because a lack of effective discharge planning. This provides a much better way to get people out of the hospital and let them become full members of society. Creating minimum standards for community treatment for criminal insanity patients, similar to those for LRA treatment orders, will ease these patients' transition. Both my defense attorney hat and PSRP hat support this. I am concerned not everyone needs the supervision of a community corrections officer (CCO). The court should be able to waive this by making affirmative findings why a CCO is unnecessary. I know prosecutors who would be willing to not refile criminal charges against patients leaving the hospital if they heard there is a supportive community plan. The bill should define what it means to be a specially-trained CCO. The PSRP has been suggesting a transition team model for ten years. Patient success and community safety go hand in hand. Transition teams offer the strength of a multidisciplinary approach. We see transition planning occur differently for civil populations, who have well planned LRA treatment orders, and forensic patients that have few requirements. Figuring out the details later is not a good approach. If you do intensive planning first and work towards conditional release the patient stays on the LRA and succeeds. Well-trained CCOs pay attention to drug testing, compliance, and serving as a resource for the individual. The different patient populations have similar characteristics. Hospital supervisors tell me the number one thing their patients need to get out is the help of CCOs. Then we free up a very expensive hospital bed for a person who needs it. The transition team model works at the Special Commitment Center and has reduced recidivism to near zero. The courts have upheld transition teams. We have questions about how a transition team would be integrated into existing community processes. We want to better understand and work with you. Are we hoping the CCOs will actually be mental health professionals? It is crucial to require the individual's community behavioral health provider to be part of the transition team. Some activities in the bill are not billable to Medicaid which will present a funding challenge. Implementing this bill will create plans for focused support, increasing the likelihood of a person's successful and positive return to the community.

CON: We support transition planning and increasing community supports. We believe that CCOs do not play a constructive role in transition teams. Focus on well-being instead of compliance. All transition teams should have a peer support specialist. Peers will be most knowledgeable for providing consultation on mental health advance directives.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; David Hackett, Public

Safety Review Panel; Jim Bloss, National Alliance on Mental Illness Washington; Ann Christian, Washington Council for Behavioral Health; Kari Reardon, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

CON: Darya Farivar, Disability Rights Washington.

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