SENATE BILL REPORT
E2SSB 5071

As Amended by House, April 11, 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: Senate Committee on Ways & Means (originally sponsored by 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, 2/05/21 [DPS-WM].
Ways & Means: 2/18/21, 2/22/21 [DP2S, DNP, w/oRec].

Floor Activity: Passed Senate: 3/1/21, 49-0.
Passed House: 4/11/21, 70-28.

Brief Summary of Engrossed Second Substitute Bill

- Requires the appointment of a transition team to facilitate the success of certain civil commitment patients upon release to the community following the dismissal of criminal charges.
- Extends certain minimum requirements for less restrictive alternative treatment to persons committed pursuant to criminal insanity laws which are established in law for other committed persons.
- Requires behavioral health administrative services organizations to collect information related to less restrictive alternative treatment and provide notifications.

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

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.

Majority Report: That Substitute Senate Bill No. 5071 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Frockt, Nobles and Warnick.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5071 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Liias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senator Schoesler, Assistant Ranking Member, Capital.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford, Assistant Ranking Member, Capital.

Staff: Corban Nemeth (786-7736)

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 Engrossed Second Substitute Bill: Minimum requirements for an order of conditional release to less restrictive alternative treatment for a person who has been civilly committed under criminal insanity laws are increased by:

- requiring the appointment of a multidisciplinary transition team to assist the person, consisting of a representative of the community behavioral health agency providing treatment, 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 multidisciplinary transition team to assist the person, consisting of a representative of the community behavioral health agency providing treatment and a specially-trained community corrections officer.

In either case, the court may omit appointing the community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person or the community. The Department of Corrections must collaborate with DSHS to develop specialized training for community corrections officers who participate in transition teams. A community corrections officer without special training may be appointed if necessary to avoid causing delay to the entry of a conditional release or LRA treatment order.

A transition team must monitor the person's progress in treatment, compliance with court-ordered conditions, and problem solve around extra support the person may need or circumstances that may arise that threaten the safety of the person and the community. The team must meet according to a schedule developed by the team, and communicate as needed if issues arise that require immediate attention. The Health Care Authority must coordinate with DSHS to offer contracts to community behavioral health agencies to support the nonmedicaid costs entailed in fulfilling the agencies' role in transition teams, and may establish requirements and provide technical assistance and training to these agencies within available funding.

Conditional release planning for persons civilly committed under criminal insanity laws must start at admission, and be facilitated by the state hospital liaison for the person's managed care organization or behavioral health administrative services organization. LRA treatment pursuant to a conditional release order may include a substance use disorder evaluation instead of, or in addition to, a psychiatric evaluation, must include consultation about the formation of a mental health advance directive, and may include periodic court review. The care coordinator may share information with parties as needed to implement the involuntary treatment order. The committed 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 DSHS without substantial danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

Superior courts must share all involuntary commitment hearing outcome information with their local behavioral health administrative services organization, which must track information related to LRA treatment orders and ensure the information is distributed to the

appropriate managed care organization if the person is enrolled in Medicaid. The behavioral health administrative services organization 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, not just when adequate resources are available to provide the services.

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 Health Care Authority 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.

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 Original Bill (Behavioral Health Subcommittee to Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* 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 (Behavioral Health Subcommittee to Health & Long Term Care): 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 (Behavioral Health Subcommittee to Health & Long Term Care): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The Public Safety Review Panel is invested in both public safety and patient success. The primary barriers to conditional release are poor planning and a lack of monitoring resources. This bill solves both problems, and will lead to more successful conditional releases. This will also save money by reducing state hospital costs.

I know how this works because I have had clients go through the not guilty by reason of insanity system. Often, because there is not supervision, prosecutors refiled criminal charges. This is a very bad outcome for individuals who then have to go back into the criminal justice system. This bill ensures clients are released with supports to keep them from coming back into the system. The Health Care Authority is already mandated to

provide services to individuals exiting the hospital, which should reduce the fiscal impact of the bill.

CON: In principle, Disability Rights Washington believes there should be more robust supports for individuals coming out of state hospitals. However, we are opposed because we do not believe spending money on training and supervision by community corrections officers is an effective use of funding. We believe there will be increased costs to the Department of Corrections in future years driven by community corrections officer supervision. We would rather see this funding go to mental health professionals to support recovery.

Persons Testifying (Ways & Means): PRO: Kari Reardon, WACDL/WDA; David Hackett, PSRP.

CON: Darya Farivar, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Requires a person who is receiving outpatient treatment from a behavioral health agency pursuant to a conditional release order from a state hospital after an adjudication of not guilty by reason of insanity to receive care coordination services from a representative of DSHS instead of from the treating behavioral health agency.
- Clarifies that the clerk of the court, instead of the superior court, must share hearing outcomes for hearings under the Involuntary Treatment Act with behavioral health administrative services organizations.