

# HOUSE BILL REPORT

## E2SHB 2078

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### As Passed Legislature

**Title:** An act relating to persons with developmental disabilities who are in correctional facilities or jails.

**Brief Description:** Concerning persons with developmental disabilities who are in correctional facilities or jails.

**Sponsors:** House Committee on Health & Human Services Appropriations (originally sponsored by Representatives Roberts, O'Brien, Walsh, Jacks, Appleton, Goodman, Dickerson, Green, Kagi, Chase, Wood, Kenney and Haler).

**Brief History:**

**Committee Activity:**

Human Services: 2/16/09, 2/19/09 [DPS];

Health & Human Services Appropriations: 2/25/09, 2/26/09 [DP2S(w/o sub HS)].

**Floor Activity:**

Passed House: 3/11/09, 96-0.

Senate Amended.

Passed Senate: 4/9/09, 47-0.

House Concurred.

Passed House: 4/20/09, 95-0.

Passed Legislature.

#### Brief Summary of Engrossed Second Substitute Bill

- Requires a work group consisting of the Developmental Disabilities Council and the Washington Association of Sheriffs and Police Chiefs, in consultation with the Department of Corrections, the Department of Social and Health Services, Disability Rights Washington, and others, to develop recommendations to the Legislature regarding expeditious determination of eligibility for developmental disability services for incarcerated offenders, reasonable accommodations, alternatives to confinement prior to trial, prosecutorial and sentencing alternatives, and the feasibility of developing and adopting a screening tool and training for law enforcement; a report of the work group is due to the Legislature no later than December 1, 2009.
- Requires, by July 1, 2010, a work group to develop a simple screening tool, a model policy for its use cost-effective means to provide concise training for

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use of the tool, and information on best practices and training regarding appropriate accommodations for persons with developmental disabilities to assist in the identification of offenders with developmental disabilities.

- This act expires on December 1, 2010.

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## HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Green, Klippert, Morrell, O'Brien and Walsh.

**Staff:** Linda Merelle (786-7092)

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## HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Human Services. Signed by 15 members: Representatives Pettigrew, Chair; Seaquist, Vice Chair; Schmick, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Appleton, Cody, Dickerson, Ericksen, Johnson, Miloscia, Morrell, O'Brien, Roberts, Walsh and Wood.

**Staff:** Trista Zugel (786-7157)

### **Background:**

In 2006 a 41-year-old man with developmental disabilities was booked into a county jail pursuant to a 911 call for misdemeanor assault. The person who called 911 was the man's mother, and the alleged assault was treated as a domestic violence matter. Thus, the responding officers were required to take the person considered to be the aggressor to jail. The man had the physical abilities of an adult, but had not developed mentally beyond a child-like stage. He was in jail for approximately two weeks and released. Several hours after his release, he was returned to jail because his mother again called 911. He was released seven days later, having spent a total of 22 days in jail in solitary confinement. While in jail, the man refused food and water, and his physical and mental health deteriorated significantly.

### Eligibility for Services.

A person who has been assessed as being eligible for services provided by the Division of Developmental Disabilities (Division) is eligible for both state assistance and federal medical assistance. Medical assistance benefits allow for medical care as provided under Title XIX of the federal Social Security Act. If an eligible person is booked into a correctional facility, he or she does not receive state-funded services while in custody, and the person is no longer eligible for medical assistance.

In 2008 a work group convened to examine the feasibility of expediting the eligibility reinstatement process for individuals who were receiving medical assistance at the time of

incarceration. In January 2009 the Department of Social and Health Services released a report to the Legislature in which it proposed a five-phase model for promptly reinstating the eligibility for any person who was receiving medical assistance at the time of incarceration.

#### Training for Law Enforcement Personnel.

In 2003 the Legislature required the Criminal Justice Training Commission to develop a training session on law enforcement interaction with persons who suffer from mental illness and who have developmental disabilities. At the minimum, the training was required to address the following:

- the cause and nature of mental illnesses and developmental disabilities;
- how to identify indicators of mental illness and developmental disabilities;
- how to respond appropriately in common situations;
- conflict resolution and de-escalation techniques for potentially dangerous situations involving persons with mental illness or developmental disabilities;
- appropriate language use;
- alternatives to lethal force; and
- community and state resources available to persons who have a mental illness or developmental disabilities.

The statute passed by the Legislature in 2003 did not include a requirement for training to personnel for city and county jail facilities.

#### **Summary of Engrossed Second Substitute Bill:**

The DDC and the WASPC are required to convene a work group in consultation with:

- the Department of Corrections;
- the Department of Social and Health Services (DSHS);
- Disability Rights Washington;
- consumer advocates;
- Washington Traumatic Brain Injury Strategic Partnership; and
- other interested organizations.

The work group is required to develop recommendations and report to the Legislature by December 1, 2009 regarding:

- expeditiously reviewing and determining eligibility for developmental disabilities services for an offender with developmental disabilities prior to his or her release;
- the appropriate role of the DSHS in providing consultation and technical assistance for reasonable accommodations for offenders in correctional facilities who have a developmental disability;
- increasing the authority of the courts to order alternatives to confinement prior to trial or following conviction where the sentence is 12 months or less;
- establishing a diversion option under the Sentencing Reform Act for persons with developmental disabilities;
- the feasibility of developing and adopting law enforcement training for responding to persons with developmental disabilities analogous to crisis intervention training for response to persons with mental illness; and

- the need for and feasibility of developing a screening tool and training for corrections staff for identification of persons with developmental disabilities.

By July 1, 2010, the workgroup shall develop a simple screening tool that may be used by jails as part of a jail's intake and/or classification process which will identify offenders with the most common types of developmental disabilities. In addition, the workgroup shall develop:

- a model policy for the use of the screening tool;
- a cost-effective means to provide concise training to jail and staff on the use of the tool; and
- information on best practices and training regarding appropriate accommodations for persons with developmental disabilities during confinement in jail.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Human Services):**

(In support) The meat of the bill is that we are looking for a better understanding of who, when they come into an incarceration setting, has a developmental disability. Through this screening, we want to assure that the individual understands what is happening to him and what is expected of him. We are looking for some screening tools, training of staff, and a better understanding. Jail staff sometimes do not understand how to work with persons with developmental disabilities. It is also important to address whether the goal of keeping the community safer is going to be met by keeping a person with developmental disabilities in jail or prison, or do we need to find alternatives. This allows us to at least be a little more cautious in how we handle these individuals. This bill provides for staff support and a bridge to the community. It will help address the ability of a person with a developmental disability to understand the environment they are in. With this bill, we tried to figure out simple, basic steps to improve the situation for a person in jail with developmental disabilities. Most important is to create a screening tool that a jail guard or other staff who are working with the person may use.

(Neutral) The Division of Developmental Disabilities has a rule that they will review eligibility when there is a request for paid services. A person was in custody for three extra years because eligibility was reviewed just prior to release. This bill will fix that.

(Opposed) None.

**Staff Summary of Public Testimony (Health & Human Services Appropriations):**

(In support) Key factors that need to be addressed are the need for a screening tool so that jails can identify developmentally disabled individuals when they are booked into jails, and the need to make any training easily accessible, brief, and inexpensive.

(With concerns) There are concerns about how the process will work. The substitute bill appears to be less clear in that it removes the rulemaking authority for the agency. As a result the correctional facilities are unclear about how they would work to interact with the agency when they release a developmentally disabled offender. It is important to have the tool administered at the right time during the process of admitting someone into a jail facility. Booking areas are inappropriate areas for this type of interview. Also, the correctional facilities would need to be included in the development of a screening tool if they were required to use it. There are concerns about unfunded increases in services.

(Opposed) None.

**Persons Testifying** (Human Services): (In support) Representative Roberts, prime sponsor; Melody Oxley; Beki Hissam, Benton-Franklin Parent Coalition; Ed Holen, Developmental Disabilities Council; Robert Warden; Patty Gee, Autism Society of Washington; and David Lord, Disability Rights Washington.

(Neutral) Todd Carlisle, Northwest Justice Project.

**Persons Testifying** (Health & Human Services Appropriations): (In support) Representative Roberts, prime sponsor; Ed Holen, Developmental Disabilities Council; David Lord, Disability Rights Washington; Richard Bishop, Clark County Sherrifs Office; and Dianna Stadden, Arc of Washington.

(With concerns) Linda Rolfe, Division of Developmental Disabilities; and Joanna Arlow, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying** (Human Services): None.

**Persons Signed In To Testify But Not Testifying** (Health & Human Services Appropriations): None.