

# HOUSE BILL REPORT

## HB 1767

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to forensic competency examinations.

**Brief Description:** Permitting a forensic competency examination to be conducted in a jail, detention or correctional facility, or appropriate community setting by one examiner.

**Sponsors:** Representatives Lovick, Campbell, Mielke, Lantz and O'Brien; by request of Department of Social and Health Services.

**Brief History:**

**Committee Activity:**

Judiciary: 2/20/03, 2/27/03 [DPS].

**Brief Summary of Substitute Bill**

- Provides that when there is reason to doubt the competency of a defendant charged with a misdemeanor or gross misdemeanor, the court may designate one evaluator (instead of two) to examine the defendant in the local jail, detention facility, or appropriate community setting.
- Allows a court, upon agreement of the parties, to designate one evaluator (instead of two) to conduct competency exams of defendants charged with felonies and sanity exams of defendants pleading not guilty by reason of insanity.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Trudes Tango Hutcheson (786-7384).

**Background:**

Competency to stand trial focuses on the defendant's ability, at trial, to understand the

nature of the proceedings against him and assist in his own defense. A determination of insanity, on the other hand, focuses on whether the defendant's mental condition at the time of the crime was so defective that he could not perceive the nature of his act. Insanity is a defense to the crime, which the defendant generally must plead either at arraignment or within 10 days of arraignment.

Whenever a defendant pleads not guilty by reason of insanity, or the defendant's competency to stand trial is in doubt, the court must require the Department of Social and Health Services (DSHS) to designate at least two qualified experts or professional persons to examine the defendant and report on the defendant's mental condition. At least one of the experts or professionals must be approved by the prosecuting attorney.

For the purposes of the examination, the court may order the defendant committed to a hospital or other secure public or private mental health facility for a period of time necessary to complete the examination, but not to exceed 15 days from the time of admission to the facility.

The report of the examination must include: (a) a description of the nature of the exam; (b) a diagnosis of the mental condition of the defendant; (c) an opinion as to competency if the defendant suffers from a mental disease or defect, or is developmentally disabled; (d) whether the defendant intends to rely on the insanity defense; (e) when directed by the court, an opinion as to the defendant's capacity to have a particular state of mind that is an element of the offense; and (f) an opinion as to whether the defendant should be evaluated for commitment under the involuntary commitment laws and whether the defendant is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety unless kept under further control.

The Legislature required the Joint Legislative Audit and Review Committee (JLARC) to conduct a study of the Mentally Ill Offender Act that was enacted in 1998. The act made numerous changes to the state's civil commitment and criminal insanity laws. The JLARC presented a report in December 2000. Among other things, the JLARC found that: (a) Western State Hospital conducts most of its competency evaluations on an outpatient basis (typically in the local jails) and often waives the requirement, with the agreement of the parties, that there be two evaluators; and (b) Eastern State Hospital conducts most of its evaluations on an inpatient basis, and there is a backlog of people waiting to be admitted for evaluation.

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### **Summary of Substitute Bill:**

Whenever there is reason to doubt the competency of a defendant who has been charged with a misdemeanor or gross misdemeanor, the court on its own motion or on the motion of any party shall request the DSHS to designate an expert or professional to examine the defendant in a local jail, detention, correctional facility, or appropriate community setting

and report on the defendant's mental condition. The report must be submitted to the court within 15 days of the expert or professional receiving the court's order, charging documents, and relevant discovery materials. If clinically necessary and requested by the expert or professional, the court may order the defendant committed to a hospital or other secure public or private mental health facility, for up to 15 days, to complete the exam.

If the parties agree, the court may designate one expert or professional (instead of two) to conduct a competency exam of a defendant charged with a felony or a sanity exam of a defendant pleading not guilty by reason of insanity.

The competency examination report is not required to include an opinion as to the defendant's sanity at the time of the act or an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged. The sanity report is not required to include an opinion as to competency.

### **Substitute Bill Compared to Original Bill:**

The original bill allows a competency exam to be done by one evaluator for any defendant (as opposed to just defendants charged with misdemeanors or gross misdemeanors) when the defendant's competency is in doubt. Under the substitute bill, a competency exam for a defendant charged with a felony must be done by two evaluators unless the parties agree to use only one.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** This bill will reduce the delay in getting these evaluations done. It will help reduce the expense, such as transportation costs, to counties. Competency evaluations are usually done in local jails in the western part of the state. If the evaluator feels that he or she is not getting a true evaluation of the individual, the evaluator will recommend the individual go into an inpatient facility for the evaluation. There is a backlog in Eastern State because two evaluators are needed right now and there needs to be a hospital bed available. The bill would still require the DSHS to provide the evaluator.

**Testimony Against:** In western Washington, one evaluator is used if the parties agree. This bill presents a cost shift to the counties. Defendants will be taking up room in the local jail since they would not be going to the mental health hospital. It's important that early evaluations are done well. Using one evaluator should only be by agreement of the

parties.

**Testified:** (In support) Representative Lovick, prime sponsor; and Karl Brimmer, Department of Social and Health Services Mental Health Division.

(Opposed) Michael Shaw, Pierce County.