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HOUSE BILL 1767

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Lovick, Campbell, Mielke, Lantz and O'Brien; by request of Department of Social and Health Services

Read first time 02/07/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to forensic competency examinations; amending RCW  
2 10.77.060; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature intends to authorize the  
5 performance of forensic competency examinations conducted by the  
6 department of social and health services by a single examiner in a  
7 local jail or detention or correctional facility or out of custody. A  
8 forensic competency examination performed either in a jail or detention  
9 or correctional facility or in an appropriate community setting by one  
10 examiner is more cost-effective and can lead to a shorter total period  
11 of detention. Public health, safety, and welfare are promoted when  
12 defendants are detained in the jail or can be released to an  
13 appropriate community setting rather than placed in a mental health  
14 facility where vulnerable persons are being treated.

15 **Sec. 2.** RCW 10.77.060 and 2000 c 74 s 1 are each amended to read  
16 as follows:

17 (1)(a) Whenever there is reason to doubt the competency of a  
18 defendant, the court on its own motion or on the motion of any party

1 shall request the secretary to designate a qualified expert or  
2 professional person to examine, in a local jail or detention or  
3 correctional facility or in an appropriate community setting, and  
4 report upon the mental condition of the defendant. The designated  
5 expert or professional person shall be a developmental disabilities  
6 professional if the court is provided evidence by any party that the  
7 defendant may be developmentally disabled. The report of the results  
8 of the examination, in a local jail or detention or correctional  
9 facility or in an appropriate community setting, shall be submitted to  
10 the court within fifteen days of the expert or professional person  
11 receiving the order of the court, charging documents, and the relevant  
12 discovery materials. If clinically necessary and requested by the  
13 designated expert or professional person, the court may order the  
14 defendant committed to a hospital or other suitably secure public or  
15 private mental health facility for a period of time necessary to  
16 complete the examination, but not to exceed fifteen days from the time  
17 of admission to the facility.

18 (b) Whenever a defendant has pleaded not guilty by reason of  
19 insanity(~~(, or there is reason to doubt his or her competency)~~)  
20 pursuant to RCW 10.77.030, the court on its own motion or on the motion  
21 of any party shall either appoint or request the secretary to designate  
22 at least two qualified experts or professional persons, one of whom  
23 shall be approved by the prosecuting attorney, to examine and report  
24 upon the mental condition of the defendant. Upon agreement of the  
25 parties, the court may designate one expert or professional person to  
26 conduct the examination and report on the mental condition of the  
27 defendant. At least one of the experts or professional persons  
28 appointed shall be a developmental disabilities professional if the  
29 court is (~~advised~~) provided evidence by any party that the defendant  
30 may be developmentally disabled. For purposes of the examination, the  
31 court may order the defendant committed to a hospital or other suitably  
32 secure public or private mental health facility for a period of time  
33 necessary to complete the examination, but not to exceed fifteen days  
34 from the time of admission to the facility.

35 (~~(b)~~) (c) When a defendant is ordered to be examined or committed  
36 for inpatient examination under this subsection (1), the court may  
37 delay granting bail until the defendant has been (~~evaluated~~) examined  
38 for competency or sanity and appears before the court. Following the

1 ((evaluation)) examination, in determining bail the court shall  
2 consider: (i) Recommendations of the expert or professional persons  
3 regarding the defendant's competency, sanity, or diminished capacity;  
4 (ii) whether the defendant has a recent history of one or more violent  
5 acts; (iii) whether the defendant has previously been acquitted by  
6 reason of insanity or found incompetent; (iv) whether it is reasonably  
7 likely the defendant will fail to appear for a future court hearing;  
8 and (v) whether the defendant is a threat to public safety.

9 (2) The court may direct that a qualified expert or professional  
10 person retained by or appointed for the defendant be permitted to  
11 witness the examination authorized by subsection (1) of this section,  
12 and that the defendant shall have access to all information obtained by  
13 the court appointed experts or professional persons. The defendant's  
14 expert or professional person shall have the right to file his or her  
15 own report following the guidelines of subsection (3) or (4) of this  
16 section. If the defendant is indigent, the court shall upon the  
17 request of the defendant assist him or her in obtaining an expert or  
18 professional person.

19 (3) The report of the examination regarding competency must include  
20 the following:

- 21 (a) A description of the nature of the examination;
- 22 (b) A diagnosis of the mental condition of the defendant;
- 23 (c) An opinion as to competency; and
- 24 (d) An opinion as to whether the defendant should be evaluated by  
25 a county designated mental health professional under chapter 71.05 RCW,  
26 and an opinion as to whether the defendant is a substantial danger to  
27 other persons, or presents a substantial likelihood of committing  
28 criminal acts jeopardizing public safety or security, unless kept under  
29 further control by the court or other persons or institutions.

30 (4) The report of the examination regarding sanity shall include  
31 the following:

- 32 (a) A description of the nature of the examination;
- 33 (b) A diagnosis of the mental condition of the defendant;
- 34 (c) ~~((If the defendant suffers from a mental disease or defect, or~~  
35 ~~is developmentally disabled, an opinion as to competency;~~
- 36 ~~(d) If the defendant has indicated his or her intention to rely on~~  
37 ~~the defense of insanity pursuant to RCW 10.77.030,)) An opinion as to  
38 the defendant's sanity at the time of the act;~~

1       (~~(e)~~) (d) When directed by the court, an opinion as to the  
2 capacity of the defendant to have a particular state of mind which is  
3 an element of the offense charged;

4       (~~(f)~~) (e) An opinion as to whether the defendant should be  
5 evaluated by a county designated mental health professional under  
6 chapter 71.05 RCW, and an opinion as to whether the defendant is a  
7 substantial danger to other persons, or presents a substantial  
8 likelihood of committing criminal acts jeopardizing public safety or  
9 security, unless kept under further control by the court or other  
10 persons or institutions.

11       (~~(4)~~) (5) The secretary may execute such agreements as  
12 appropriate and necessary to implement this section.

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