

HOUSE BILL REPORT

SSB 5533

As Reported by House Committee On:
Human Services

Title: An act relating to procedures for individuals who are mentally ill and engaged in acts constituting criminal behavior.

Brief Description: Revising procedures for individuals who are mentally ill and engaged in acts constituting criminal behavior.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Pflug, Hargrove, Kline, Swecker, Delvin, Stevens, Holmquist, Parlette and Hewitt).

Brief History:

Committee Activity:

Human Services: 3/26/07, 3/28/07 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Makes substantive, reorganizational, and technical changes to statutes pertaining to competency procedures for people with mental illness who are involved in the criminal justice system.

HOUSE COMMITTEE ON HUMAN SERVICES

Majority Report: Do pass as amended. Signed by 8 members: Representatives Dickerson, Chair; Roberts, Vice Chair; Ahern, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Bailey, Darneille, McCoy and O'Brien.

Staff: Sonja Hallum (786-7092).

Background:

Competency in a criminal proceeding refers to the defendant's ability to understand the proceedings against him and to be able to assist his attorney in his defense.

During the course of a criminal proceeding if there is a question as to whether a defendant is competent to stand trial the court will stay, or stop, the proceedings until a determination is

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made as to the defendant's competency. Any party, or the court on its own motion, may request an evaluation of the defendant's competency.

If the defendant is charged with a felony and is determined to be incompetent, the court may commit the defendant to the custody of the Secretary of the Department of Social and Health Services (DSHS) who will then place the defendant in an appropriate facility for evaluation and treatment until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense. The defendant may be held for up to 90 days and the court may order the defendant to be held an additional 90 days if necessary.

If the defendant is charged with a nonfelony and the defendant has a history of violent acts or was previously found incompetent or acquitted by reason of insanity, and is determined to be incompetent on the current charge, the court may commit the defendant to the custody of the DSHS who will then place the defendant in an appropriate facility for evaluation and treatment until he or she has regained competency. The defendant may not be held for more than 14 days for a nonfelony charge.

If the defendant is charged with a nonfelony, and the defendant does not meet the criteria listed above based on the defendant's history or charged offense, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the designated mental health professional to evaluate the defendant and consider initial detention proceedings under the mental health commitment statutes. The court does not have the option in this instance to hold the defendant to restore competency.

If the defendant has been held for competency restoration and competency is restored, or competency is not restored within the time allotted by statute, the defendant is returned to court for a hearing. If competency has been restored, the stay is lifted and the case continues. If the court concludes that competency has not been restored, but that further treatment within the time limits established by the statute is likely to restore competency, the court may order that treatment for purposes of competency restoration be continued. If competency has not been restored, and further treatment will not restore competency, the proceedings are dismissed.

Summary of Amended Bill:

Authority of Police Officer

When a police officer has reasonable cause to believe that an individual with a mental illness has committed acts constituting a nonfelony crime that is also not a serious offense as defined by statute, the officer may take the individual to a crisis stabilization unit, refer the individual to a mental health professional for evaluation under the mental health commitment statutes, or release the individual upon agreement to voluntary participation in outpatient treatment. The officer is immune from liability so long as the officer acts in good faith.

If the individual does not complete treatment or the mental health treatment alternative is no longer appropriate, charges may then be filed against the individual.

Competency

General Provisions

Current law pertaining to both felony and nonfelony cases are reorganized into one statute pertaining to general competency law.

Language is added to clearly specify that mental health professionals are permitted to return individuals to court at any time during the restoration period if they determine that the individual's competency has been restored, or that the individual will not regain competency, regardless of whether the individual is being held for a felony or a misdemeanor offense.

Felony and Misdemeanor Procedure

There are no substantive changes to the felony competency procedure. The statutes are only reorganized into a new section.

There are changes to the misdemeanor competency procedure. The offenses for which a defendant may be held for competency restoration are narrowed to include only those nonfelony offenses which are considered "serious offenses" by statute. If a defendant is charged with a nonfelony offense that is not considered a "serious offense" by statute, the court may detain the defendant for an evaluation to determine whether mental health proceedings should be initiated under the Involuntary Treatment Act.

Adult Mental Health Statutes

Crisis Stabilization Units

The definition section in the mental health statutes is amended to define a crisis stabilization unit as a short-term facility for individuals who are experiencing an acute crisis and who need to be assessed, diagnosed, and provided short-term treatment. The DSHS is required to certify and to establish crisis stabilization unit minimum standards, such as:

- (1) physical separation from the general offender population if in a jail;
- (2) administering treatment by mental health professionals; and
- (3) securing appropriately, given the nature of the crime involved.

Non-Emergent Detentions

The procedure for non-emergent detentions is modified. The current summons process is eliminated and replaced with a process in which the court may enter an order to detain an individual who poses a likelihood of serious harm or grave disability based on the sworn statement of a mental health professional.

It is expressly stated that no jail or correctional facility may be considered a less-restrictive alternative.

The individual may be detained for up to 72 hours if there is probable cause to support the petition of the designated mental health professional and the individual has refused or failed to accept the appropriate evaluation and treatment voluntarily.

Task Force

A task force is created and is mandated to review how to increase access to mental health services for individuals who are involved with the criminal justice system due to their mental illness and how to reduce the number of people with mental health illness entering and reentering the criminal justice system.

Amended Bill Compared to Substitute Bill:

The amended bill makes several technical corrections to the Senate bill including changing an incorrect Revised Code of Washington reference and clarifying several provisions.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support of original bill) This is an important bill. There are few facilities for the mentally ill, so the jails and prisons have become a major source of mental health treatment. This bill focuses on the least serious of offenders and gives police and prosecutors discretion to divert them into the mental health system. This bill is a result of an unprecedented group of people working together to reduce the population of mentally ill offenders in jails and prisons. The task force created in the bill continues the work of this group. The bill helps to fill a gap for the mentally ill. There are a few technical changes that need to be made to the bill. The National American Jail Association and the National Sheriff's Association have identified mentally ill offenders entering the criminal justice system as the major issue facing jails today. Many misdemeanor, mentally ill offenders are taking up jail space that could be used for more serious offenders. The goal of this bill is to focus on the front end with people who don't belong in jail. The National Alliance on Mental Illness supports this bill because it is a more cost-effective, appropriate, and humane process for dealing with mentally ill offenders.

(Opposed) None.

Persons Testifying: Eleanor Owen, Jim Adams, and Seth Dawson, National Alliance on Mental Illness-Washington; Judy Lightfoot; Ethan Rogers, King County Prosecuting Attorney's Office; and Mark E. Bolton, King County Adult and Juvenile Detention.

Persons Signed In To Testify But Not Testifying: None.