

HOUSE BILL REPORT

SSB 6492

As Passed House - Amended:

March 8, 2012

Title: An act relating to improving timeliness, efficiency, and accountability of forensic resource utilization associated with competency to stand trial.

Brief Description: Improving timeliness, efficiency, and accountability of forensic resource utilization associated with competency to stand trial.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens and Regala).

Brief History:

Committee Activity:

Judiciary: 2/16/12.

Floor Activity:

Passed House - Amended: 3/8/12, 98-0.

Brief Summary of Substitute Bill (As Amended by House)

- Establishes performance targets and other obligations relating to competency evaluations and related competency services.
- Revises procedures and requirements for competency evaluations and reports, competency restorations, and related competency services.
- Establishes study and reporting requirements relating to competency performance targets and other monitoring and productivity standards.
- Establishes standards for state hospitals relating to the administration of antipsychotic medication without consent to an individual who is committed as criminally insane.
- Prohibits local jails from refusing to book a patient of a state hospital solely based on the patient's status as a state hospital patient.

HOUSE COMMITTEE ON JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Edie Adams (786-7180).

Background:

In a criminal case, a court may require an evaluation of a defendant who may be incompetent to stand trial or who pleads not guilty by reason of insanity. A person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. A person is incompetent if the person, as a result of a mental disease or defect, lacks the capacity to understand the nature of the criminal proceedings or to assist in his or her own defense.

Competency Evaluations.

When a criminal defendant pleads insanity or where the defendant's competency is in question, the court must appoint at least two qualified experts or professional persons to examine and report on the defendant's mental condition, one of whom must be approved by the prosecuting attorney. If the defendant has a developmental disability, one of the experts must be a developmental disabilities professional. The court may appoint only one expert to conduct the evaluation upon agreement of the parties.

The court may order the evaluation to take place at the state hospital for a period of time necessary to complete the examination, up to 15 days. If the defendant is detained in jail, the court may order the evaluation to take place in the jail with agreement of the parties.

Competency Reports.

The report of an examination of a defendant who may be incompetent or who pleads insanity must include: a diagnosis of the mental condition of the defendant; an opinion as to competency and an opinion as to sanity if insanity is claimed; an opinion as to whether the defendant should be evaluated under the Involuntary Treatment Act (ITA); and an opinion as to whether the defendant is a substantial danger to others or presents a substantial likelihood of committing criminal acts endangering public safety.

Competency Restoration.

If a person is found incompetent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency, or dismiss the charges without prejudice.

If a defendant charged with a felony is found incompetent, the court may order two 90-day periods of treatment to restore the defendant's competency, and in some cases may order that the defendant undergo competency restoration for a further period of up to six months. A defendant charged with a non-felony offense that is classified as serious is eligible for one period of inpatient competency restoration of no more than 14 days, plus any unused evaluation time. For a non-felony offense that is not a serious offense, the court may stay or dismiss proceedings and detain the defendant for a sufficient time to allow a designated mental health professional to evaluate the defendant for a civil commitment under the ITA.

If the defendant cannot be restored to competency within the designated time periods, the criminal case must be dismissed without prejudice. If the offense charged was a felony or serious non-felony, the defendant is transported to a state hospital for a civil commitment

evaluation. The state may petition for civil commitment for a period of up to 90 days for a misdemeanor, or up to 180 days for a felony, which may be renewed at successive civil commitment hearings.

Civil Commitment and Administration of Antipsychotic Medication.

Involuntary civil commitment laws allow for the commitment of individuals by court order to hospitals or other facilities for mental health treatment under specified legal standards.

Under the ITA, a person can be detained and ordered to undergo treatment at an inpatient psychiatric facility when the person, as a result of a mental disorder, presents a likelihood of serious harm or is gravely disabled.

A person may be committed to a state psychiatric hospital as criminally insane if the person is found not guilty by reason of insanity and the court or jury determines that the person is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety, unless kept under further control by the court.

Persons involuntarily committed generally have the right to refuse to consent to the administration of antipsychotic medication. The ITA establishes standards and procedural requirements allowing for the administration of antipsychotic medication without the consent of the patient under some circumstances. Generally, a court may order administration of antipsychotic medication to civilly committed persons if the petitioner proves by clear, cogent, and convincing evidence that a compelling state interest justifies overriding the patient's lack of consent, the proposed treatment is necessary and effective, and medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective. Administration of antipsychotic medication without a court order is allowed in emergency treatment situations as long as certain requirements are met and a petition authorizing the administration of the medication is filed on the next judicial day.

The statute governing commitment of persons as criminally insane provides that the Secretary of the Department of Social and Health Services (Department) shall provide adequate care and individualized treatment to persons found criminally insane, but it does not contain specific provisions governing the involuntary administration of antipsychotic medication.

Summary of Bill:

Performance targets and other obligations are established with respect to competency evaluation and restoration services, and the process for conducting evaluations of criminal defendants who may be incompetent or who plead not guilty by reason of insanity is revised.

Performance Targets and Other Duties.

The following performance targets are established for the completion of accurate competency evaluations and admissions for inpatient competency-related services for criminal defendants:

- no more than seven days for the state hospital to offer admission to a defendant who is in pre-trial custody or whose charges have been dismissed based on incompetency;
- no more than seven days for completion of a jail evaluation for a defendant in pre-trial custody;

- no more than 21 days for completion of an evaluation in the community for a defendant who is released from custody and makes a reasonable effort to cooperate with the evaluation.

These time periods run from the date the state hospital receives charging documents, discovery, and criminal history information. A non-exclusive list of factors that may inhibit the ability of the Department to meet these standards is provided.

The Department must implement procedures for early discharge of defendants for whom clinical objectives are achieved before the end of the commitment period. The Department also must investigate and respond to incidents of patients overstaying authorized commitment periods and establish and utilize written standards for evaluating the productivity of forensic evaluators.

These provisions do not create any new entitlement or cause of action related to the timeliness of competency-related evaluations or services, and cannot form the basis for contempt sanctions or a motion to dismiss criminal charges.

Competency Evaluations.

The process for conducting evaluations of criminal defendants who may be incompetent or who plead not guilty by reason of insanity is revised. The court will designate one qualified expert or professional person, rather than two, to conduct the evaluation. The evaluator must assess the defendant in a jail, detention facility, the community, or the court, to determine whether an inpatient commitment is needed to complete an accurate evaluation. If an inpatient commitment is not necessary, the evaluator will complete the evaluation.

A court may commit a defendant for evaluation without an assessment if: (1) the defendant is charged with Murder in the first or second degree; (2) the court finds that a jail evaluation will be inadequate for an accurate evaluation; or (3) the court finds that an evaluation outside the jail is necessary for the health, safety, or welfare of the defendant. The court may not order an initial inpatient evaluation for any purpose other than a competency evaluation.

The court order for competency evaluation or restoration must indicate whether all parties agree to waive the defendant's presence, or agree to the defendant's remote participation, at a subsequent competency hearing held prior to the expiration of the authorized commitment period. The parties may agree to the waiver of the defendant's presence or to remote participation by the defendant if the recommendation of the evaluator is for continuing the stay of criminal proceedings or if the evaluator determines that the defendant remains incompetent and there is no remaining restoration period.

A defendant receiving an inpatient evaluation must be discharged as soon as the person is determined to be competent to stand trial. The discharge must not be postponed during the writing and distribution of the report, which should be accomplished within two days of the completion of the evaluation.

Competency Reports.

The required contents of an evaluation report are revised. The report may provide a description of the mental status of the defendant, rather than a diagnosis. The requirement

that the report include an opinion as to whether the defendant is a substantial danger to others or presents a substantial likelihood of committing criminal acts endangering public safety is eliminated except in insanity evaluations. For felony defendants, an assessment of the future dangerousness of the defendant must be provided at the end of the second competency restoration period, or at the end of the first competency restoration period if incompetence is based on a developmental disability or the defendant is not likely to regain competency.

Where a defendant has raised a defense of insanity or diminished capacity, the evaluation report will include an opinion as to the defendant's sanity or diminished capacity only if an expert or professional person has provided a report concluding that the defendant was insane at the time of the alleged offense or lacked the capacity to form the required mental state.

Competency Restoration.

Competency restoration periods are revised. For a defendant whose highest charge is a class C felony or a class B felony that is not a violent offense, the maximum time for the first restoration period is decreased from 90 days to 45 days.

At the end of the statutorily authorized restoration periods, if a defendant remains incompetent, the court may commit the defendant for up to 72 hours, excluding weekends and holidays, for evaluation for the purpose of filing a civil commitment petition. The court hearing on the petition must be held within 10 judicial days, rather than five judicial days, of the first court appearance after the probable cause hearing. The court may continue the hearing for good cause upon request of the petitioning state hospital. The five-day limit for continuance of a hearing on an involuntary commitment petition is eliminated.

Reports and Studies.

The Department must annually report on the timeliness of competency services and the timeliness with which court referrals and documentation are provided to the Department. The Department must report quarterly to the executive and legislative branches any instances where performance targets are not met and the corrective action taken to improve performance.

The Joint Legislative Audit and Review Committee must report to the Legislature an assessment of the performance of the state hospitals with regard to performance targets, clinical monitoring obligations, and forensic evaluator productivity, six months and 18 months after the effective date of the act. The Washington State Institute for Public Policy must study and report to the executive and legislative branches the benefit of standardizing protocols for competency restoration treatment.

Civil Commitment and Administration of Antipsychotic Medication.

Standards are established for the administration of antipsychotic medication without consent to an individual who is committed as criminally insane.

A state hospital may administer antipsychotic medication without consent to an individual who is committed as criminally insane according to the same general standards that apply to the administration of antipsychotic medication without consent to a patient committed under the ITA.

The maximum time period for administration of medication without consent to an individual committed as criminally insane may not exceed 180 days, or the time remaining on the commitment order, whichever is shorter. The petition for involuntary medication may be filed in either the superior court of the county that ordered the commitment or where the individual is receiving treatment. The superior court of the county that ordered the commitment retains exclusive jurisdiction over all hearings concerning the release of the patient.

Local jails are prohibited from refusing to book a patient of a state hospital solely based on the patient's status as a state hospital patient. Local jails may consider other relevant factors that apply to individual circumstances.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect on May 1, 2012.

Staff Summary of Public Testimony:

(In support) There is a serious backlog of people languishing in jails, sometimes for months, waiting for competency evaluations. These defendants are segregated from the general population and held in solitary confinement, which can have a negative impact on their mental condition. The state is at risk of a federal lawsuit based on these delays, which could cost the state a lot of money.

The bill addresses the backlog by creating efficiencies in the evaluation process so we will not need additional resources. Jail evaluations can be done just as effectively and more quickly without violating due process. This will free up beds at the hospital for treatment services. Removing the future dangerousness assessment for all defendants, and trimming other required contents of the evaluation reports, will save unnecessary evaluator time and allow more assessments with the same number of people. The bill does not address all of the concerns about keeping the mentally ill out of our jails, but it takes us in the right direction.

(In support with concerns) The performance targets in the bill are aspirational goals, not enforceable time lines. The Department will need additional financial resources to meet these targets, particularly to handle the increased outpatient evaluations. Reducing the initial restoration period is a concern because defendants typically need the full 90 days. The defendant should not be allowed to waive his or her presence at competency hearings. The portions of the bill allowing a longer time for hearing a civil commitment petition for incompetent defendants, and allowing state hospitals to continue these cases, will result in delays and added costs for inpatient treatment.

(Opposed) We have concerns about the standards the bill creates given the enormity of evaluations that must be conducted. There were over 3,000 evaluations conducted last year. The narrow timelines do not recognize the variety of issues that can impact the ability to get to an evaluation and will result in less accurate evaluations. Creating these timelines sets the

state up for potential lawsuits. The targets are not sufficient to improve performance. We need more evaluators in order to conduct better and faster evaluations.

Jails are not the right place for people who are seriously mentally ill. Changing the default from a hospital evaluation to a jail evaluation is fine since most are currently done in jails. However, there needs to be more discretion for a judge to order an inpatient evaluation if necessary for the health, safety, or welfare of the defendant. Rural counties are not equipped to handle more than one or two people with mental issues.

(Other) The bill changes the default to jail evaluations, but it also contains a safety valve that allows the court to order inpatient evaluations in some cases where it is necessary. It is important that this bill is not tied to the closure of a hospital ward because currently there are not enough forensic beds.

Persons Testifying: (In support) David Lord, Disability Rights of Washington; Ronald Kessler, King County Superior Court; Michael Finkle, King County District Court; and Seth Dawson, National Alliance on Mental Illness.

(In support with concerns) Mike DeFelice, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Bob Cooper, Washington Defender Association and Washington Association of Criminal Defense Lawyers; and Judy Snow, Pierce County Corrections.

(Opposed) Larry Thompson, Washington State Federation of State Employees; Jo Arlow, Washington Association of Sheriffs and Police Chiefs; and Brian Enslow, Washington Association of Counties.

(Other) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.