SENATE BILL REPORT
SB 5114

As Reported by Senate Committee On:
Human Services & Corrections, February 17, 2011

Title: An act relating to streamlining competency evaluation and competency restoration procedures.

Brief Description: Streamlining competency evaluation and competency restoration procedures.

Sponsors: Senator Hargrove.

Brief History:
Committee Activity: Human Services & Corrections: 1/27/11, 2/17/11 [DPS, w/oRec].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5114 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Baxter, Harper and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senator Carrell.

Staff: Kevin Black (786-7747)

Background: A defendant is competent to stand trial if the defendant has the capacity to understand the nature of the criminal proceedings against him or her and to assist in his or her own defense. Court decisions have found that a defendant who is incompetent may not be placed on trial.

If the issue of competency is raised with respect to a particular defendant, the court must order a competency evaluation be conducted. The court may choose to assign one or two experts to the evaluation. An evaluation typically consists of a review of available records and a two-hour interview during which tests are administered. The court may order the evaluation to take place in a jail, in a state hospital, or in the community. If, after receiving a report of the evaluation, the court finds that the defendant is incompetent, a period of treatment may be authorized to restore the defendant to competency. If the court finds that the defendant is competent, the case proceeds to trial.

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.

A defendant who is charged with a felony is eligible for up to three periods of competency restoration treatment for a total of 360 days. If the defendant is still incompetent at the end of the treatment, the court must dismiss the case and order the defendant to be transported to a state hospital for a civil commitment evaluation. The defendant is eligible for a renewable period of civil commitment for up to 180 days.

A defendant who is charged with a misdemeanor which is classified as serious is eligible for one period of competency restoration treatment for up to 14 days. If the defendant is still incompetent at the end of this period, the court must dismiss the case and order the defendant to be transported within 72 hours to an evaluation and treatment facility (E&T) for a civil commitment evaluation. The defendant is eligible for a renewable period of civil commitment for up to 90 days. In practice, courts frequently waive competency restoration treatment for incompetent misdemeanor defendants and frequently order incompetent misdemeanor defendants to be transported directly to a state hospital for a civil commitment evaluation.

Summary of Bill (Recommended Substitute): A court must order a competency evaluation to be completed by one qualified expert who is approved by the prosecuting attorney. The court may order two evaluators to be assigned when the defendant is charged with aggravated murder. The evaluation must take place in the jail or the community, unless the evaluator determines that the admission of the defendant to a state hospital is necessary in order to complete an accurate evaluation. An opinion about future dangerousness is incorporated into an insanity evaluation and into the first felony competency restoration period.

The effective date of chapter 280, Laws of 2010 (Second Substitute House Bill 3076) is delayed from January 1, 2012, to January 1, 2013.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): The court may order two competency evaluators to be assigned when the defendant is charged with aggravated murder. An opinion about future dangerousness is incorporated into an insanity evaluation and into the first felony competency restoration period. Provisions related to misdemeanor competency restoration are removed. The effective date of chapter 280, Laws of 2010 (Second Substitute House Bill 3076) is delayed from January 1, 2012, to January 1, 2013.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Misdemeanor restoration is not clinically relevant and should be ended. The resources could be better used in the civil system. A defendant with a developmental disability should be evaluated by a developmental

disability specialist. A defense attorney's input should be factored into the decision as to where the evaluation should take place.

CON: Our experience contradicts the data showing that increasing the number of jail evaluations will decrease the time that criminal defendants spend in jail. DMHPs may not have the capacity to handle the additional evaluations of misdemeanor defendants. DMHPs will not reliably commit defendants who have mental illnesses and they will avoid treatment. The future dangerousness evaluation is of great use to felony attorneys and community providers. The elimination of non-felony competency restoration will take us back 13 years. Misdemeanors are important and must be taken seriously. Misdemeanor defendants are unsafe to treat in the community and should therefore be committed directly to the state hospital. Competency evaluations for the most serious cases need the best possible evaluation, and the best evaluation is available in the state hospital. A hospital evaluation holds up better during the prosecution of a case. This bill amounts to a significant cost shift to counties and jails, because we don't believe the data indicating that utilizing jail evaluations reduces the consumption of jail bed days. The data provided by DSHS bears no relationship with the experience in Pierce County. Reducing access to the civil commitment system there will seriously impact public safety.

OTHER: County budgets are a cause for concern. In King County, the civil commitment system does not have the capacity to absorb additional patients. Information about future dangerousness is not relevant in a misdemeanor case but is relevant for felonies. DMHP may not commit all defendants who are referred for civil commitment evaluations. The increasing strain on resources will cause both the quality and quantity of treatment to be reduced. Some misdemeanor defendants have very concerning criminal histories and the facts of their cases are very disturbing. It's not clear what legal authority exists to detain a defendant in jail after a misdemeanor is dismissed. State hospitals should be required to admit defendants after their cases have been dismissed. A defendant with a developmental disability should be evaluated by a developmental disability specialist. We need to make sure we are using good data.

Persons Testifying: PRO: Abbey Perkins, Washington Defenders Association; Cindy Arends, public defender.

CON: Jennifer Grant, Washington State Bar Association Criminal Law Section; Craig Adams, Pierce County Sheriff's Office; Judy Snow, Pierce County Detox and Corrections Mental Health; Tom McBride, Washington Association of Prosecuting Attorneys; Don Pierce, Washington Association of Sheriffs and Police Chiefs.

OTHER: Anne Harper, District and Municipal Court Judge's Association; Len McComb, King County; David Lord, Disability Rights Washington.