

# FINAL BILL REPORT

## SSB 6492

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Synopsis as Enacted

**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).

**Senate Committee on Human Services & Corrections**  
**Senate Committee on Ways & Means**  
**House Committee on Judiciary**

**Background:** A criminal defendant is incompetent to stand trial if the defendant does not have the capacity to understand the proceedings against him or her or does not have sufficient ability to assist in his or her own defense. If competency is raised in the context of a criminal case, the court is required to issue a stay of trial for evaluation of competency to stand trial by forensic staff from a state hospital. If, following the evaluation, the court determines that the defendant is incompetent to stand trial, a period of competency restoration treatment is allowed at a state hospital. If competency cannot be restored within time periods authorized by statute, the court must dismiss charges without prejudice and may transfer the defendant to a state hospital or evaluation and treatment facility for further evaluation for the purpose of filing a petition for civil commitment. Competency evaluations may be performed at the direction of the court in a state hospital, in jail, or in the community for out-of-custody defendants. Western State Hospital and Eastern State Hospital received 3,035 court referrals for initial competency evaluations for adult defendants in 2011.

The competency evaluation and restoration process is a source of delay for the resolution of criminal charges; it extends the time spent in jail for pretrial defendants who are referred for competency evaluations and who have not been released from custody. For these defendants in 2011, based on a weighted average of ten months' data from the Department of Social and Health Services (DSHS) between March and December, the average time spent waiting in jail for admission to a state hospital for a competency evaluation after submission of a referral to a state hospital was 41 days, while the average time spent waiting in jail for completion of an outpatient competency evaluation and report after submission of a referral to a state hospital was 24 days.

**Summary:** The following performance targets are established for completion by the state hospital of competency services:

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*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.*

- seven days for admission to a state hospital for evaluation, treatment, or civil conversion;
- seven days for completion of an evaluation and report for a defendant in jail; and
- 21 days for completion of an evaluation and report for a defendant in the community who makes reasonable efforts to cooperate with the evaluation.

These performance targets run from the date the state hospital receives the referral, charging documents, discovery, and criminal history information and these targets do not create any new entitlement or cause of action related to the timeliness of competency services. The act states that the Legislature recognizes that the performance targets may not be achieved in all cases without compromise to the quality of evaluation services, but intends for DSHS to manage, allocate, and request appropriations for resources to meet these targets whenever possible without sacrificing the accuracy of the evaluation.

The court is limited to the appointment of one state forensic evaluator. The evaluator must assess whether commitment to a state hospital for up to 15 days is necessary in order to complete an accurate evaluation. The court may commit the defendant to a state hospital for an inpatient evaluation without an assessment if the defendant is charged with murder in the first or second degree, or if the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation. The court may not order an inpatient evaluation for any purpose other than a competency evaluation.

The order for evaluation or competency restoration must indicate whether the parties agree to waive the presence of the defendant or agree to the defendant's remote participation in a future competency hearing if the recommendation states that the defendant is incompetent to stand trial and the hearing is held prior to the expiration of the statutory authority for commitment.

The competency evaluation report must include a diagnosis or description of the current mental status of the defendant. An evaluation for criminal insanity or diminished capacity must not be performed unless the evaluator is provided with an evaluation by an expert or professional person finding that criminal insanity or diminished capacity is present. An evaluation of future dangerousness is not required until the end of the second felony competency restoration period unless the evaluation is for criminal insanity or the defendant has a developmental disability or it is determined that competency is not likely to be restored and the defendant has completed the first felony competency restoration period.

The first competency restoration period for a felony defendant whose maximum charge is a class C felony or a nonviolent class B felony is shortened from 90 to 45 days. When a felony defendant is committed to a state hospital for civil conversion after charges are dismissed based on incompetency to stand trial, a civil commitment petition must be filed within 72 hours excluding weekends and holidays following the defendant's admission to the facility. Time for trial on such a petition is extended from five to ten judicial days.

DSHS must develop procedures to monitor the clinical status of defendants admitted to the state hospital to allow for early discharge when the clinical goals of admission have been met, investigate the extent to which defendants overstay time periods authorized by statute and take reasonable steps to prevent this occurrence, and establish written standards for the

productivity of forensic evaluators and utilize those standards to internally review performance.

DSHS must report annually starting December 1, 2013, on the timeliness of competency services in a manner that is broken down by county. Following any quarter in which performance targets are not met, DSHS must report the extent of the deviation to the legislative and executive branches and any corrective actions that have been adopted.

The Joint Legislative Audit and Review Committee must independently assess the progress of DSHS with performance measures and monitoring activities both six and eighteen months following the effective date. The Washington State Institute for Public Policy must study effective time periods and protocols for competency restoration treatment.

A jail may not refuse to book a patient of a state hospital based solely on the patient's status as a state hospital patient, but may consider other relevant factors which apply to the individual circumstances of the case.

A state hospital may administer antipsychotic medication without consent to a person committed as criminally insane by following the same procedures that apply to the involuntary medication of a person who has been involuntarily committed for 180 days under the Involuntary Treatment Act. The maximum period during which the court may authorize medication is 180 days or the time remaining in the person's order of commitment, whichever is shorter. The petition for involuntary medication may be filed in either the superior court that ordered the commitment of the person or the superior court of the county in which the individual is receiving treatment, provided that a copy of any order which is entered is forwarded to the superior court of the county that ordered the commitment, which must retain exclusive jurisdiction over all hearings concerning the release of the patient.

The state has a compelling interest in providing antipsychotic medication to a patient who has been committed as criminally insane when refusal of antipsychotic medication would result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of the patient.

**Votes on Final Passage:**

Senate	47	0	
House	62	36	(House amended)
Senate			(Senate refused to concur)
House	98	0	(House receded/amended)
Senate	49	0	(Senate concurred)

**Effective:** May 1, 2012