

SENATE BILL REPORT

SSB 6492

As Amended by House, 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: Human Services & Corrections: 1/27/12, 2/02/12 [DPS].

Ways & Means: 2/06/12, 2/07/12 [DPS(HSC)].

Passed Senate: 2/14/12, 47-0.

Passed House: 3/08/12, 62-36.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6492 be substituted therefor, and the substitute bill do pass.

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

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6492 as recommended by Committee on Human Services & Corrections be substituted therefor, and the substitute bill do pass.

Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Brown, Conway, Fraser, Harper, Hatfield, Hewitt, Holmquist Newbry, Honeyford, Kastama, Keiser, Kohl-Welles, Padden, Pridemore, Regala, Schoesler and Tom.

Staff: Tim Yowell (786-7435)

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.

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

- 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 do not create any new entitlement or cause of action related to the timeliness of competency services. The bill states the Legislature recognizes that the performance targets may not be able to 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, about 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.

Appropriation: None.

Fiscal Note: Requested on January 26, 2012.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: This bill addresses the problem of people backing up in the jails for months waiting for competency evaluations. The longer the defendants are in jail, the greater the chance of decompensation. We want to speed up this process, save money, and get to a just result for the courts and the defendant. Timeliness would be improved by this bill. It modifies parts of the competency laws passed in 1974 which do not make sense today. The dangerousness assessment should be done when it is needed, not in every evaluation. Accuracy is enhanced when the evaluation is completed close to when the court sees the defendant. Out of custody evaluations are taking six to eight months; someone who was initially safe to be out of custody may significantly deteriorate in that time. Decreasing restoration time for class C felons comes closer to matching clinical reality. Defaulting to an evaluation in jail will prevent defendants languishing for months, waiting to be sent to a state hospital. Limited judicial discretion is wise in situations the defendant may be faking a mental illness. This legislation frees up hospital beds for restoration treatment to move cases along faster. Some courts abuse the statute by sending defendants to the state hospital for the purpose of a generalized mental health evaluation, which should be a local expense.

CON: Performance targets are appreciated, but seem worthless without some hammer to ensure they are met. The opt out provision is not workable because the county loses priority for evaluations. The bill doesn't address lack of staff at the state hospital. The courts should retain discretion to commit defendants to a state hospital for evaluation. We do 80 percent of evaluations in the jail but it isn't right for every defendant. We are willing to look at standards for this but we need a safety valve. Backlog is created because we don't have enough forensic bed space. It's okay to default to jail if the court retains discretion to send the defendant to the state hospital. Smaller jails without onsite mental health staff have more difficulties compared to larger counties. The bill does have helpful provisions that we agree with. Assigning a second evaluator should be allowed for good cause. Under the bill the state would be forced to pay for more outside experts to evaluate diminished capacity and insanity. Pressure to evaluate more defendants more quickly leads to substandard work, which will increase costs for contested court hearings and outside experts. Most evaluations can be conducted appropriately in the jail.

OTHER: Thank you for the intent to finish evaluations more quickly. The problem with timeliness is severe and grotesque. Six months is too long a period to phase in improvements. The target dates are good but should be court enforceable. The shorter restoration period for class C felonies is welcome and should be extended to nonviolent B felonies. Some defendants need an observation period at the state hospital for evaluation so the court should retain discretion. Additional resources are needed or there will be an incentive to decrease the accuracy and quality of services. Deferring the dangerousness assessment will be helpful for the state hospitals. Work has already been done to improve problems. It will not always be possible to complete an evaluation in seven days. A defendant who doesn't cooperate with an evaluation in the community should be returned to court. No significant differences exist between a competency evaluation in a jail versus in a state hospital, other than the ability to consult with treatment staff. Competency delays impact liberty and constitutional rights. Medical histories should be obtained and the report should include a diagnosis. Ability to have a second opinion should be retained. In an ideal world no evaluations would occur in jail. Sanctions should be available if reports are not filed. From the perspective of a defendant, time limits should start from the date the court

signs the order and data collection should include that date. Auditing is a good idea and should be expanded to include effects of long stays in jail on persons with mental illness.

Persons Testifying (Human Services & Corrections): PRO: Senator Hargrove, prime sponsor; Honorable Michael Finkle, King County District Court; Honorable Ronald Kessler, King County Superior Court.

CON: Brian Enslow, WA Assn. of Counties; Tom McBride, WA Assn. of Prosecuting Attorneys; Jo Arlow, WA Assn. of Sheriffs and Police Chiefs; Matt Zuvich, Trevor Travers, WA Assn. of State Employees; Judy Snow, Pierce County Corrections.

OTHER: Daron Morris, WA Defender Assn., WA Assn. of Criminal Defense Lawyers; MaryAnne Lindeblad, Aging and Disability Services Administration; Tara Fairfield, Western State Hospital; Seth Dawson, National Alliance for Mental Illness; David Lord, Disability Rights Washington.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: Long waiting times for completion of evaluations of competency to stand trial and for admission to the state psychiatric hospitals for competency restoration treatment are significant and long-standing problems. This legislation provides useful tools to address those problems.

CON: The bill shifts the presumption that competency evaluations should occur in the state hospital to a presumption that they should occur in jail. Judges should have more discretion in that regard. There is also concern that the bill could result in closure of a forensic ward at Western State Hospital. Aspects of the bill could actually result in greater costs for the state. The performance standards could cause evaluations being completed too quickly, and in more people being found incompetent and admitted for competency restoration than would otherwise be the case.

Persons Testifying (Ways & Means): PRO: David Lord, Disability Rights of WA; Seth Dawson, National Alliance for the Mentally Ill of WA; Bob Cooper, WA Defenders' Assn.; Dan Murphy, Aging & Adult Services, DSHS.

CON: Brian Enslow, WA Assn. of Counties; Matt Zuvich, Wa Federation of Employees.

House Amendment(s): The court may commit a defendant to a state hospital for a competency evaluation for up to 15 days under circumstances where commitment is not necessary to complete an accurate evaluation, but the court finds that an evaluation outside the jail setting is necessary for the health, safety, or welfare of the defendant.

Removes provisions extending the time for trial for a civil commitment petition for a former felony defendant whose case was dismissed based on incompetency to stand trial, and allowing the state to request a continuance of such a trial for good cause.

The provisions of ESSB 6010 are added to the bill, as follows:

- The crime of custodial assault is expanded to include an assault on a full or part-time staff member or volunteer, any educational personnel, any personal service provider, or any

vendor or agent of a state hospital who was performing official duties at the time of the assault.

- 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.