

HOUSE BILL REPORT

HB 1627

As Reported by House Committee On:
Judiciary

Title: An act relating to competency to stand trial evaluations.

Brief Description: Concerning competency to stand trial evaluations.

Sponsors: Representatives Morrell, Nealey, Zeiger, Jinkins and Ryu.

Brief History:

Committee Activity:

Judiciary: 2/19/13, 2/21/13 [DPS].

Brief Summary of Substitute Bill

- Establishes standards for a court to appoint an evaluator to conduct competency evaluations when performance targets for the completion of evaluations are not being met in a county.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

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. 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.

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.

When a criminal defendant's competency is in question, the court must appoint, or ask the Department of Social and Health Services (Department) to designate, a qualified expert or professional person to evaluate and report on the defendant's mental condition. The evaluator must be approved by the prosecuting attorney. 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.

Performance Targets.

In 2012 the Legislature established performance targets for the timely completion of competency evaluations. By November 1, 2012, competency evaluations for defendants in jail should be completed within seven days, and a defendant ordered to an inpatient evaluation should be admitted to a state hospital within seven days. By May 1, 2013, competency evaluations in the community for defendants released from custody should be completed within 21 days.

The Legislature recognized that these targets may not be achievable in all cases, but directed the Department to manage and allocate resources in order to meet these targets whenever possible without compromising the quality of competency evaluations. Beginning December 2013, the Department must annually report on the timeliness of competency services. The Department must also report quarterly any instances where performance targets are not met and the corrective action taken to improve performance.

Summary of Substitute Bill:

In any six-month time period where the state hospital has not met the performance targets for competency evaluations in 50 percent of the cases submitted by any one county, the court may appoint a qualified expert or professional person approved by the prosecutor and the defense attorney to evaluate and report on the defendant's mental condition. The expert or professional person must be appointed from a list assembled with input from the prosecuting attorney and defense bar. The prosecuting attorney, in deciding whether to approve appointment of the expert, may consider whether an evaluation in the jail will be inadequate.

A qualified expert or professional person appointed for an indigent person should be compensated in an amount that will encourage in-depth evaluation reports. The Department must reimburse the county for the costs of the qualified expert or professional person appointed for an indigent person in an amount determined to be fair and reasonable by the Department, and that is at least equivalent to the amount for evaluations conducted by the Department.

The act expires June 30, 2016.

Substitute Bill Compared to Original Bill:

The original bill provided that the court is responsible for ensuring the timely completion of accurate and reliable evaluations in accordance with the performance standards. The original bill did not require appointment of evaluators from a list and did not require defense attorney approval of the appointed evaluator. The original bill also did not state that evaluators should be compensated in an amount that will encourage in-depth evaluation reports, and that reimbursement by the Department must be in an amount that is at least equivalent to the amount for state hospital evaluators. The original did not contain an expiration date for the act.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 22, 2013.

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

Staff Summary of Public Testimony:

(In support) The public is asking the Legislature to focus on the issue of criminal defendants with mental illness. Too many people with serious mental illness are languishing in jails for months at a time waiting for competency evaluations. Sometimes they spend more time in jail than if they had been convicted of the charges. Jails are not equipped to be mental health providers, so these people tend to decompensate in a jail setting. The bill creates a stop gap measure to complete evaluations sooner.

Pierce County is experiencing a mental health crisis. We have 80 to 90 individuals in jail on any given day who are receiving medication for mental illness. The state has fallen behind in providing evaluations and now there is a huge backlog. The number of requests for evaluations has increased by over 80 percent since 2001. The Department cannot meet the targets without assistance. Independent evaluations are already done, so there is an existing pool of independent qualified experts who will be available to do these evaluations. The counties would cover the evaluation costs above what the Department pays. All counties will benefit from reducing the backlog, even though not all counties will financially be able to take advantage of the bill.

The bill should make it clear that the evaluations should be quality evaluations. Both the defense attorney and the prosecutor should have input in choosing the evaluator to ensure objective evaluations.

(With concerns) The Department has had many discussions with Pierce County on this bill. The issue is a fiscal one. The Department receives 225 referrals per month from the courts. The Department is close to being fully staffed, but they have a 270 case backlog, and a demand for evaluations that is continuing to grow.

(Opposed) The current crisis is a symptom of shutting down wards and decreased capacity at the state hospitals. We currently have only four evaluators to conduct jail evaluations. A main concern is that the bill is contracting out state jobs to independent evaluators. We cannot support a bill that contracts out state psychologist work without acknowledging that this is a funding issue.

Persons Testifying: (In support) Representative Morrell, prime sponsor; Pat McCarthy, Pierce County Executive; Paul Pastor, Pierce County Sheriffs; David Lord, Disability Rights of Washington; Al Rose, Pierce County Director of Justice; Stephen Penner, Pierce County Prosecutors Office; and Brian Enslow, Washington State Association of Counties.

(With concerns) Jane Beyers, Department of Social and Health Services.

(Opposed) Matt Zuvich, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.