

HOUSE BILL REPORT

SHB 2205

As Passed House:
February 17, 2014

Title: An act relating to mental status evaluations.

Brief Description: Modifying mental status evaluation provisions.

Sponsors: House Committee on Public Safety (originally sponsored by Representative Takko).

Brief History:

Committee Activity:

Public Safety: 1/21/14, 1/29/14 [DPS].

Floor Activity:

Passed House: 2/17/14, 96-0.

Brief Summary of Substitute Bill

- Removes the requirement that a court order a presentence report before sentencing a defendant whom they determine if he or she may be mentally ill.
- Allows a court to order an outpatient mental status evaluation and treatment for a defendant even if there is no presentence report.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Staff: Sarah Koster (786-7303).

Background:

If a court determines that an offender to be sentenced may be a mentally ill person, although the offender has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the

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.

crime, the court shall order the Department of Corrections to complete a presentence report before imposing a sentence.

If a court finds that reasonable grounds exist to believe that the offender is a person with a mental illness and that this condition is likely to have influenced the offense, the court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment. The order must be based on a presentence report and any mental status evaluations that may have been filed with the court to determine the offender's competency or eligibility for a defense of insanity.

In *State v. Robert Locke* (2013), the trial court sentenced Robert Locke to 12 months confinement and ordered a mental health evaluation and treatment as a sentencing condition without first obtaining the required presentence report. The state conceded the error and the case was remanded to the trial court to vacate the sentence condition.

Summary of Substitute Bill:

If a court determines that an offender to be sentenced may be a mentally ill person, although the offender has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court may, but need not, order the Department of Corrections to complete a presentence report before imposing a sentence.

If a court finds that reasonable grounds exist to believe that the offender is a person with a mental illness and that this condition is likely to have influenced the offense, the court may order an offender whose sentence includes community placement or community supervision to undergo an outpatient mental status evaluation and to participate in available outpatient mental health treatment. The order may, but need not, be based on a presentence report and any mental status evaluations that may have been filed with the court to determine the offender's competency or eligibility for a defense of insanity.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3 relating to sentencing hearings, which takes effect July 1, 2014.

Staff Summary of Public Testimony:

(In support) This was judicial request legislation to clarify, in light of a case, that judges do have the authority to order evaluations and treatment without a presentence report and to acknowledge current practice. When the underlying law was drafted, the Department of Corrections had more resources and a presentence report could be ordered in any case. Now, because of resource constraints, they are only available in sexual assault type cases, but this law is still on the books. A lot of the people being sentenced need to keep up their mental

health treatment to avoid returning to court in the future. Judges need the ability to tell them to maintain their treatment, without having to ask for a presentence report that is unobtainable given the resources.

(Opposed) This bill is dangerous because it allows unbridled discretion to the judiciary. There needs to be some form of safeguards before defendants, even those convicted of crimes, are sentenced to mental health treatment. In the Union of Soviet Socialist Republics (USSR), one of the worst abuses was sentencing dissidents to mental health treatment and throwing them into institutions. This could happen in a county in Washington, if a person had an outburst about violations of his or her rights. There should be reasonable safeguards; mental evaluations should be reviewed with an opportunity for defense attorneys to object.

Persons Testifying: (In support) Representative Takko, prime sponsor; and Steve Warning, Superior Court Judges Association.

(Opposed) Arthur West.

Persons Signed In To Testify But Not Testifying: None.