

HOUSE BILL REPORT

ESSB 5551

As Reported by House Committee On:
Judiciary
Appropriations

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

Brief Description: Concerning competency to stand trial evaluations.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Conway, Carrell and Shin).

Brief History:

Committee Activity:

Judiciary: 3/21/13, 4/2/13 [DPA];

Appropriations: 4/5/13 [DPA(JUDI)].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Establishes standards for the appointment of an evaluator to conduct competency evaluations when performance targets for the completion of evaluations of in-custody defendants are not being met in a county.
- Requires the Department of Social and Health Services (Department) to reimburse the county for the costs of the appointed evaluator in an amount that is at least equivalent to the amount for evaluations conducted by the Department, subject to amounts appropriated for this specific purpose.
- Requires the Office of the State Human Resources Director to gather and report on market salary data for psychologists and psychiatrists employed by the state.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

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.

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.

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 Amended Bill:

Until June 30, 2016, the Department must, subject to amounts appropriated for this purpose, reimburse a county for the cost of appointing a qualified expert or professional person to conduct a competency evaluation for a defendant in jail if the Department has not met performance targets for competency evaluations for in-custody defendants in 50 percent of the cases submitted by the county during the most recent quarter. Whether the Department is

meeting the performance targets is determined from the Department's most recent quarterly report or Department records.

The qualified expert or professional person must be appointed from a list assembled with participation by representatives of the prosecuting attorney and the county defense bar. The prosecutor or defense attorney may object to the appointment of the evaluator on the basis that an inpatient evaluation is appropriate under current statutory standards.

The qualified expert or professional person must complete an evaluation and report that includes components specified in statute. The county must provide a copy of the evaluation report to the state hospital if the defendant is referred for admission, and must maintain data on the timeliness of competency evaluations conducted by appointed evaluators.

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 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 county is responsible for the costs of the evaluation that exceed the amount reimbursed by the Department.

The Office of the State Human Resources Director, within current resources, must gather market salary data for psychologists and psychiatrists employed by the Department and the Department of Corrections and report to the Governor and relevant legislative committees by June 30, 2013.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill added the following components:

- The Department's obligation to reimburse counties is subject to amounts appropriated for this specific purpose.
- The county must provide a copy of the evaluation report to the applicable state hospital upon referral of the defendant for admission, and maintain data on the timeliness of competency evaluations by appointed evaluators.
- The evaluator must complete an evaluation and report that includes components specified in statute.
- An emergency clause and immediate effective date applies to section 2 of the act, which requires the market salary data report to be submitted to the Legislature and Governor by June 30, 2013.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 2 requiring the Office of the State

Human Resources Director to submit a market salary data report, which contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) There is a critical backlog of folks sitting in jails waiting for competency evaluations that has resulted from a large increase in competency referrals. Sometimes these people are held in jail for over two months waiting for evaluations. In Pierce County, the jail is the second largest mental health facility. Jails are not an appropriate place for people with mental illness because of the significant toll it takes on their health and the safety issues created for jails. A person's mental condition worsens in jail, which will result in the need for longer periods of competency restoration.

This bill is a priority for this session. There is currently a backlog of 270 referrals that will take 13 months to eliminate. We need to do something in the short term to solve this problem. The performance targets legislation passed last session represents good policy, but it did not create a mechanism to address the backlog. Once the backlog is eliminated, the performance targets will work. This bill provides an opportunity for counties to come forward to help meet these deadlines. There is an overall benefit to our mental health system of having evaluations take place sooner. The report on psychiatrist and psychologist salary data will help address the fact that the current wages are not competitive, which makes it difficult for the state hospital to hire people to handle the workload.

(With concerns) The bill has been improved through numerous discussions, but there are a couple of additional proposed changes. The evaluations should be required to comply with the standards required under state law. In addition, a copy of the report should be sent to the state hospital. It is important that the requirement to reimburse the counties be subject to amounts appropriated for this purpose since it is hard to estimate the number of counties who will participate.

There are concerns that the bill is contracting out state jobs due to backlogs that are a result of inadequate staffing to meet the workload. If the recruitment and retention problem for state hospital evaluators is not addressed, this bill will not fix the problem in the long term. The fractured system needs fixed. The inclusion of the salary survey for psychiatrists and psychologists is important to help address the recruitment and retention issue.

(Opposed) None.

Persons Testifying: (In support) Senator Conway, prime sponsor; Emily Cooper, Disability Rights Washington; Brian Enslow, Washington Association of Counties; and Al Rose, Pierce County Executives Office.

(With concerns) Jane Beyer, Department of Social and Health Services; and Matt Zuvich, Washington Federation of State Employees.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Judiciary. Signed by 30 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Dahlquist, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Morrell, Parker, Pedersen, Pike, Ross, Schmick, Seaquist, Springer, Sullivan and Taylor.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 2 requiring the Office of the State Human Resources Director to submit a market salary data report, which contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The fiscal note and amounts in the Senate operating budget of about \$260,000 are low. Estimates for Pierce County are around \$320,000 for the biennium. This is based on the assumption that the Department of Social and Health Services will pay \$800 per evaluation and that the counties will make up the difference. The estimate assumes that Pierce County will have 200 evaluations per year which was the number from last year. The true cost of this problem is that there are people sitting in jails who do not need to be and they should be moved on into treatment in a better place than the jails.

Last year the Legislature established a policy that timelines for completing competency evaluations in jails are important but there were no mechanisms included. This bill creates a cost effective mechanism which includes financial participation from the counties as well as the state. There are benefits across the state with this bill.

(With concerns) This item is not in Governor Inslee's budget. Prior elements of concern have been resolved in the changes made in the Judiciary Committee.

(Opposed) None.

Persons Testifying: (In support) Al Rose, Pierce County Executives Office; Judy Snow, Pierce County Corrections; and Brian Enslow, Washington Association of Counties.

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

Persons Signed In To Testify But Not Testifying: None.