

# SENATE BILL REPORT

## 2SHB 1627

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As Reported by Senate Committee On:  
Human Services & Corrections, March 28, 2013

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

**Brief Description:** Regarding competency to stand trial evaluations.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Morrell, Nealey, Zeiger, Jinkins and Ryu).

**Brief History:** Passed House: 3/11/13, 92-6.

**Committee Activity:** Human Services & Corrections: 3/25/13, 3/28/13 [DPA-WM].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Pearson, Vice Chair; Darneille, Ranking Member; Baumgartner, Hargrove, Harper and Padden.

**Staff:** Kevin Black (786-7747)

**Background:** A criminal defendant is incompetent to stand trial when, as a result of a mental disease or defect, the defendant does not have the capacity to understand the proceeding against the defendant or sufficient ability to assist in the defense. Whenever there is reason to doubt a defendant's competency, the court must either appoint or request the state hospital to designate a qualified expert, who must be approved by the prosecuting attorney, to evaluate the mental condition of the defendant. The court may direct for the evaluation to be witnessed by an expert retained by or appointed for the defense, who must be allowed to submit an independent report. Regulations adopted by the Department of Social and Health Services (DSHS) limit the reimbursement of a defense expert in this situation to \$800.

In 2012, the Legislature passed SSB 6492, which established performance targets for the state hospitals related to the timely completion of competency evaluations. Performance targets of seven days for completion of an evaluation for defendants in jail and seven days for admission to the state hospital for defendants ordered to receive an inpatient competency evaluation phased in November 2012. A 21-day performance target for completion of evaluation for defendants in the community phases in May 2013. Other changes were made for the purpose of speeding up the completion of competency evaluations.

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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.*

**Summary of Bill (Recommended Amendments):** DSHS must reimburse a county for the cost of appointing a qualified expert to complete a competency evaluation for a defendant in jail instead of requesting an evaluation from a state hospital if DSHS did not meet its statutory performance targets for the timeliness of competency evaluations in jail for at least 50 percent of defendants in the county during the most recent quarter, as determined by DSHS's most recent quarterly evaluation report or confirmed by records maintained by DSHS. The expert must be appointed from a list of qualified persons assembled with the participation of prosecutors and the defense bar in the county. The county must maintain data on the timeliness of competency evaluations completed.

The expert must be compensated in an amount that will encourage in-depth evaluation reports. The DSHS reimbursement must be provided in an amount determined by DSHS to be fair and reasonable that must at least meet the equivalent cost of evaluations conducted by DSHS, within funding appropriated for this specific purpose. Excess costs must be paid by the county.

Within current resources, the Office of the State Human Resources Director must gather market salary data related to psychologists and psychiatrists employed by DSHS and the Department of Corrections (DOC) and report to the Governor and relevant committees of the Legislature by June 30, 2013.

This act expires on June 30, 2016.

**EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments):** Reimbursement may be provided only for expert appointments related to competency evaluations for in-custody defendants. Reimbursement is not restricted to cases involving indigent defendants. Approval of the appointment by defense counsel is not required for reimbursement. The Office of the State Human Resources Director must gather market salary data related to psychiatrists and psychologists employed by DSHS and DOC.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Section 1 is effective ninety days after adjournment of session in which the bill is passed. Section 2 is subject to an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Second Substitute House Bill:** PRO: My concern relates to people who are not getting appropriate medications in jail. The Pierce County Jail is the second largest mental health facility in Pierce County, with 80-90 defendants in custody per day taking antipsychotic medication. The demand for competency evaluations has increased 82 percent since 2001. This bill provides a way for the counties to help the state to fulfill its promises and clear the evaluation backlog. Individuals around the state will benefit from improvements in timeliness. We do not support the amendment requiring a specific appropriation because we believe there are savings available from unfilled positions

at the state hospital. Individuals should not languish in jail because of evaluation delay. Delay causes avoidable human suffering and exposure to liability for the county. There is no downward trend in the response time for evaluations. The Consensus Project supports this approach to reducing jail stays for defendants with mental illness.

OTHER: We appreciate the language in the House bill requiring a specific appropriation. This bill proposes to contract out the work of psychologists at state hospitals. We acknowledge the problems that were discussed, but implore you to look at recruitment and retention problems. The problems discussed come in the wake of closing wards and losing community mental health capacity. Lack of staffing produces overtime and dangerous working conditions. The system needs change to prevent further harm.

**Persons Testifying:** PRO: Representative Morrell, prime sponsor; Al Rose, Judy Snow, Pierce County; Emily Cooper, Disability Rights WA; Brian Enslow, WA State Assn. of Counties.

OTHER: Jane Beyer, DSHS; Matt Zuvich, WA Federation of State Employees.