

SENATE BILL REPORT

SB 5551

As of February 19, 2013

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

Brief Description: Concerning competency to stand trial evaluations.

Sponsors: Senators Conway, Carrell and Shin.

Brief History:

Committee Activity: Human Services & Corrections: 2/18/13.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

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 during November 2012. A 21-day performance target for completion of evaluation for defendants in the community phases in during May 2013. Other changes were made for the purpose of speeding up the completion of competency evaluations.

Summary of Bill: Responsibility for ensuring timely completion of accurate, reliable competency evaluations is placed on the court. If during any six-month period, the state hospital has not met its performance targets for timely completion of competency evaluations in 50 percent of the cases submitted by any one county, the court of that county must appoint an expert approved by the prosecuting attorney to perform the evaluation. An expert

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appointed by the court for an indigent person must be compensated by DSHS, in an amount determined by DSHS to be fair and reasonable.

Language recognizing that performance targets for the timeliness of competency evaluations may not be achievable in all cases without compromise to the quality of evaluation services is deleted from the code.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The waiting time for defendants to receive competency evaluations is a major problem for Pierce County, causing demands on limited jail resources and jail space. On any given day there are 80-90 jail inmates prescribed medication for mental health. The state has fallen behind in providing competency evaluations, creating a backlog. People spend longer in jail than they should. The jail is not a mental health facility. People decompensate in jail while waiting for evaluations. Persons in jail for more than 30 days can lose their housing, social security income, and can go off medication. This bill will help DSHS meet its performance targets and speed up resolution of criminal matters. Good public policy keeps the community safe, upholds rights and individual dignity, and is cost effective. We want to partner with DSHS to unclog the system. Conditions in jail for persons with mental illness are difficult. The overriding cost is paid by persons with mental illness and traumatic brain injury who sit in jail waiting for these evaluations. This bill only applies when DSHS is not caught up. There are plenty of qualified psychologists in the community to do these evaluations. The defense has the right to an independent evaluation. Some defendants charged with low-level crimes spend more time in jail waiting for competency evaluations than they would if convicted of the crime. Smaller jails have difficulty segregating and managing persons with mental illness, who spend two to three times longer in jail than they should. We recommend changes to the bill to ensure adequate compensation. This is a simple mechanism to make sure timelines are met.

CON: Do not strike language stating performance targets will not always be attainable. The problem is the devastation of our mental health system. There are not enough evaluators to do the work. Studying this issue in a taskforce is the right approach. We do not support contracting out state work in response to a problem that is not of the workers' making.

OTHER: We share the concern raised by the bill and will continue the discussions we have had with Pierce County. DSHS is making major efforts to recruit forensic evaluators; we have hired 12 new evaluators in the past year. We have implemented productivity standards and the productivity of evaluators is increasing. DSHS receives 228 evaluation referrals from courts per month. The bill is unclear on several points. It should not require the appointment of outside evaluators. The key issues here are fiscal.

Persons Testifying: PRO: Senator Conway, prime sponsor; Pat McCarthy, Pierce County Executive; Paul Pastor, Pierce County Sheriff; David Lord, Disability Rights WA; Al Rose, Pierce County Executive Director of Justice Services; Steve Penner, Pierce County Prosecutor's Office; John Snaza, Thurston County Sheriff; Seth Dawson, National Alliance on Mental Illness (NAMI), NAMI WA; Brian Enslow, WA Assn. of Counties.

CON: Matt Zuvich, WA Federation of State Employees.

OTHER: Jane Beyer, DSHS.