
SENATE BILL 5551

State of Washington

63rd Legislature

2013 Regular Session

By Senators Conway, Carrell, and Shin

Read first time 02/04/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to competency to stand trial evaluations; and
2 amending RCW 10.77.060 and 10.77.068.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 10.77.060 and 2012 c 256 s 3 are each amended to read
5 as follows:

6 (1)(a) Whenever a defendant has pleaded not guilty by reason of
7 insanity, or there is reason to doubt his or her competency, the court
8 on its own motion or on the motion of any party shall either: (i)
9 Appoint a qualified expert or professional person, whom the prosecuting
10 attorney shall approve, to evaluate and report upon the mental
11 condition of the defendant; or (ii) request the secretary to designate
12 a qualified expert or professional person, who shall be approved by the
13 prosecuting attorney, to evaluate and report upon the mental condition
14 of the defendant.

15 (b) The signed order of the court shall serve as authority for the
16 evaluator to be given access to all records held by any mental health,
17 medical, educational, or correctional facility that relate to the
18 present or past mental, emotional, or physical condition of the

1 defendant. If the court is advised by any party that the defendant may
2 have a developmental disability, the evaluation must be performed by a
3 developmental disabilities professional.

4 (c) The evaluator shall assess the defendant in a jail, detention
5 facility, in the community, or in court to determine whether a period
6 of inpatient commitment will be necessary to complete an accurate
7 evaluation. If inpatient commitment is needed, the signed order of the
8 court shall serve as authority for the evaluator to request the jail or
9 detention facility to transport the defendant to a hospital or secure
10 mental health facility for a period of commitment not to exceed fifteen
11 days from the time of admission to the facility. Otherwise, the
12 evaluator shall complete the evaluation.

13 (d) The court may commit the defendant for evaluation to a hospital
14 or secure mental health facility without an assessment if: (i) The
15 defendant is charged with murder in the first or second degree; (ii)
16 the court finds that it is more likely than not that an evaluation in
17 the jail will be inadequate to complete an accurate evaluation; or
18 (iii) the court finds that an evaluation outside the jail setting is
19 necessary for the health, safety, or welfare of the defendant. The
20 court shall not order an initial inpatient evaluation for any purpose
21 other than a competency evaluation.

22 (e) The order shall indicate whether, in the event the defendant is
23 committed to a hospital or secure mental health facility for
24 evaluation, all parties agree to waive the presence of the defendant or
25 to the defendant's remote participation at a subsequent competency
26 hearing or presentation of an agreed order if the recommendation of the
27 evaluator is for continuation of the stay of criminal proceedings, or
28 if the opinion of the evaluator is that the defendant remains
29 incompetent and there is no remaining restoration period, and the
30 hearing is held prior to the expiration of the authorized commitment
31 period.

32 (f) When a defendant is ordered to be committed for inpatient
33 evaluation under this subsection (1), the court may delay granting bail
34 until the defendant has been evaluated for competency or sanity and
35 appears before the court. Following the evaluation, in determining
36 bail the court shall consider: (i) Recommendations of the evaluator
37 regarding the defendant's competency, sanity, or diminished capacity;
38 (ii) whether the defendant has a recent history of one or more violent

1 acts; (iii) whether the defendant has previously been acquitted by
2 reason of insanity or found incompetent; (iv) whether it is reasonably
3 likely the defendant will fail to appear for a future court hearing;
4 and (v) whether the defendant is a threat to public safety.

5 (2) The court may direct that a qualified expert or professional
6 person retained by or appointed for the defendant be permitted to
7 witness the evaluation authorized by subsection (1) of this section,
8 and that the defendant shall have access to all information obtained by
9 the court appointed experts or professional persons. The defendant's
10 expert or professional person shall have the right to file his or her
11 own report following the guidelines of subsection (3) of this section.
12 If the defendant is indigent, the court shall upon the request of the
13 defendant assist him or her in obtaining an expert or professional
14 person.

15 (3) The report of the evaluation shall include the following:

16 (a) A description of the nature of the evaluation;

17 (b) A diagnosis or description of the current mental status of the
18 defendant;

19 (c) If the defendant suffers from a mental disease or defect, or
20 has a developmental disability, an opinion as to competency;

21 (d) If the defendant has indicated his or her intention to rely on
22 the defense of insanity pursuant to RCW 10.77.030, and an evaluation
23 and report by an expert or professional person has been provided
24 concluding that the defendant was criminally insane at the time of the
25 alleged offense, an opinion as to the defendant's sanity at the time of
26 the act, and an opinion as to whether the defendant presents a
27 substantial danger to other persons, or presents a substantial
28 likelihood of committing criminal acts jeopardizing public safety or
29 security, unless kept under further control by the court or other
30 persons or institutions, provided that no opinion shall be rendered
31 under this subsection (3)(d) unless the evaluator or court determines
32 that the defendant is competent to stand trial;

33 (e) When directed by the court, if an evaluation and report by an
34 expert or professional person has been provided concluding that the
35 defendant lacked the capacity at the time of the offense to form the
36 mental state necessary to commit the charged offense, an opinion as to
37 the capacity of the defendant to have a particular state of mind which
38 is an element of the offense charged;

1 (f) An opinion as to whether the defendant should be evaluated by
2 a designated mental health professional under chapter 71.05 RCW.

3 (4) The secretary may execute such agreements as appropriate and
4 necessary to implement this section and may choose to designate more
5 than one evaluator.

6 **Sec. 2.** RCW 10.77.068 and 2012 c 256 s 2 are each amended to read
7 as follows:

8 (1)(a) The legislature establishes the following performance
9 targets for the timeliness of the completion of accurate and reliable
10 evaluations of competency to stand trial and admissions for inpatient
11 services related to competency to proceed or stand trial for adult
12 criminal defendants. The legislature (~~recognizes that these targets
13 may not be achievable in all cases without compromise to quality of
14 evaluation services, but~~) intends for the department to manage,
15 allocate, and request appropriations for resources in order to meet
16 these targets whenever possible without sacrificing the accuracy of
17 competency evaluations, and to otherwise make sustainable improvements
18 and track performance related to the timeliness of competency services:

19 (i) For a state hospital to extend an offer of admission to a
20 defendant in pretrial custody for legally authorized treatment or
21 evaluation services related to competency, or to extend an offer of
22 admission for legally authorized services following dismissal of
23 charges based on incompetent to proceed or stand trial, seven days or
24 less;

25 (ii) For completion of a competency evaluation in jail and
26 distribution of the evaluation report for a defendant in pretrial
27 custody, seven days or less;

28 (iii) For completion of a competency evaluation in the community
29 and distribution of the evaluation report for a defendant who is
30 released from custody and makes a reasonable effort to cooperate with
31 the evaluation, twenty-one days or less.

32 (b) The time periods measured in these performance targets shall
33 run from the date on which the state hospital receives the court
34 referral and charging documents, discovery, and criminal history
35 information related to the defendant. The targets in (a)(i) and (ii)
36 of this subsection shall be phased in over a six-month period from May

1 1, 2012. The target in (a)(iii) of this subsection shall be phased in
2 over a twelve-month period from May 1, 2012.

3 (c) It is the responsibility of the court to ensure the timely
4 completion of accurate and reliable evaluations of competency to stand
5 trial in accordance with this section to each person, charged with a
6 crime. If in any six-month time period, the state hospital has not met
7 the performance targets for timely completion of competency evaluations
8 and restorations of competency in order to stand trial in fifty percent
9 of cases submitted by any one county, the court of that county shall
10 appoint a qualified expert or professional person, whom the prosecuting
11 attorney shall approve, to evaluate and report upon the mental
12 condition of the defendant. An expert or professional person appointed
13 by the court for an indigent person pursuant to the provisions of this
14 chapter must be compensated for his or her services out of funds of the
15 department, in an amount determined by the department to be fair and
16 reasonable.

17 (d) The legislature recognizes the following nonexclusive list of
18 circumstances that may place achievement of targets for completion of
19 competency services described in (a) of this subsection out of the
20 department's reach in an individual case without aspersion to the
21 efforts of the department:

22 (i) Despite a timely request, the department has not received
23 necessary medical clearance information regarding the current medical
24 status of a defendant in pretrial custody for the purposes of admission
25 to a state hospital;

26 (ii) The individual circumstances of the defendant make accurate
27 completion of an evaluation of competency to proceed or stand trial
28 dependent upon review of medical history information which is in the
29 custody of a third party and cannot be immediately obtained by the
30 department. Completion of a competency evaluation shall not be
31 postponed for procurement of medical history information which is
32 merely supplementary to the competency determination;

33 (iii) Completion of the referral is frustrated by lack of
34 availability or participation by counsel, jail or court personnel,
35 interpreters, or the defendant; or

36 (iv) An unusual spike in the receipt of evaluation referrals or in
37 the number of defendants requiring restoration services has occurred,

1 causing temporary delays until the unexpected excess demand for
2 competency services can be resolved.

3 (2) The department shall:

4 (a) Develop, document, and implement procedures to monitor the
5 clinical status of defendants admitted to a state hospital for
6 competency services that allow the state hospital to accomplish early
7 discharge for defendants for whom clinical objectives have been
8 achieved or may be achieved before expiration of the commitment period;

9 (b) Investigate the extent to which patients admitted to a state
10 hospital under this chapter overstay time periods authorized by law and
11 take reasonable steps to limit the time of commitment to authorized
12 periods; and

13 (c) Establish written standards for the productivity of forensic
14 evaluators and utilize these standards to internally review the
15 performance of forensic evaluators.

16 (3) Following any quarter in which a state hospital has failed to
17 meet one or more of the performance targets in subsection (1) of this
18 section after full implementation of the performance target, the
19 department shall report to the executive and the legislature the extent
20 of this deviation and describe any corrective action being taken to
21 improve performance. This report must be made publicly available. An
22 average may be used to determine timeliness under this subsection.

23 (4) Beginning December 1, 2013, the department shall report
24 annually to the legislature and the executive on the timeliness of
25 services related to competency to proceed or stand trial and the
26 timeliness with which court referrals accompanied by charging
27 documents, discovery, and criminal history information are provided to
28 the department relative to the signature date of the court order. The
29 report must be in a form that is accessible to the public and that
30 breaks down performance by county.

31 (5) This section does not create any new entitlement or cause of
32 action related to the timeliness of competency evaluations or admission
33 for inpatient services related to competency to proceed or stand trial,
34 nor can it form the basis for contempt sanctions under chapter 7.21 RCW
35 or a motion to dismiss criminal charges.

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