

# HOUSE BILL REPORT

## HB 1597

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to improving timeliness of competency evaluation and restoration services, by clarifying alternative locations for the provision of competency restoration services and defining time periods of commitment.

**Brief Description:** Improving timeliness of competency evaluation and restoration services.

**Sponsors:** Representatives Jinkins, Rodne and Wylie; by request of Department of Social and Health Services.

**Brief History:**

**Committee Activity:**

Judiciary: 2/3/15, 2/19/15 [DPS].

**Brief Summary of Substitute Bill**

- Encourages the Department of Social and Health Services to develop alternative locations for competency restoration services for individuals who do not need inpatient psychiatric hospitalization.
- Provides that competency restoration time limits include only the time the defendant is at the treatment facility and do not include reasonable time for transport.
- Provides that a statute limiting the correctional confinement of a person under laws governing competency and criminal insanity applies only to persons who are criminally insane.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Muri, Orwall, Stokesbary and Walkinshaw.

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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.*

**Minority Report:** Do not pass. Signed by 2 members: Representatives Shea, Assistant Ranking Minority Member; Klippert.

**Staff:** Edie Adams (786-7180).

**Background:**

Incompetent to Stand Trial.

A criminal defendant is incompetent to stand trial if, due to a mental disease or defect, he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in his or her own defense. A defendant who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. When a defendant's competency is in question, the court must either appoint, or ask the Department of Social and Health Services (Department) to designate, a qualified expert to evaluate and report on the defendant's mental condition.

Competency Restoration.

If a person is found incompetent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency, or dismiss the charges without prejudice.

If a defendant charged with a felony is found incompetent, the court may order restoration treatment for up to 90 days, except if the defendant's highest charge is a class C felony or a non-violent class B felony, the maximum time for the first restoration period is 45 days. A second period of restoration treatment for up to 90 days may be ordered if necessary and likely to restore competency. Under limited circumstances the court may order a third period of treatment for up to six months. If a defendant has not regained competency at the end of the authorized periods of treatment, the court must dismiss the criminal charges without prejudice and order the defendant to be committed to the state hospital for evaluation for civil commitment.

A defendant charged with a serious non-felony offense is eligible for one period of inpatient competency restoration treatment for up to 14 days plus any unused evaluation time. This restoration period includes only the time the defendant is at the facility and does not include time for transport to or from the facility. If the defendant has not been restored to competency at the end of the treatment period, the court must dismiss the charges without prejudice and order that the person be evaluated for civil commitment.

Although the Department has statutory authority to provide restoration treatment in either a state psychiatric hospital or in an alternative facility determined by the Department, the Department has historically provided competency restoration services at the state hospitals.

Correctional Confinement Under the Forensic Laws.

State forensic laws govern the criminally insane and competency to stand trial procedures. A person is criminally insane if the person is found not guilty by reason of insanity and

subsequently committed to a state hospital due to substantial dangerousness or substantial likelihood of committing criminal acts jeopardizing public safety.

A statute in the forensics chapter provides that a person must not be confined in a correctional institution and that any confinement in a county jail while awaiting placement in a treatment program or a court hearing may not exceed seven days. The original statute and all subsequent amendments to the statute were part of legislation relating to the criminally insane. However, the statute does not specifically limit its application to persons who are criminally insane.

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### **Summary of Substitute Bill:**

The Legislature encourages the Department to develop, on a phased-in basis, alternative locations and increased access to competency restoration services for individuals who do not need the level of services provided in inpatient psychiatric hospitalizations. Alternate facilities may include community mental health providers or other local facilities that contract with the Department and are willing and able to provide competency restoration treatment.

County or municipal jails may be used for restoration treatment during the 2015-2017 fiscal biennium if the Secretary of the Department determines that there is an emergent need for beds and documents the justification, including a plan to address the emergency. If a jail is used for restoration treatment, patients must be physically separated from other jail populations, the model of treatment services must be substantially equivalent to that provided in the state hospitals, and restoration services must be provided in a therapeutic environment.

Competency restoration time limits for felony defendants include only the time the defendant is at the facility and do not include reasonable time for transport to or from the facility.

The statute imposing limitations on the correctional confinement of a person under the forensic laws governing competency and criminal insanity applies only to persons who are criminally insane.

Specific language is added to the felony and misdemeanor restoration statutes stating that if a court determines a defendant is unlikely to regain competency, the court may dismiss the charges without ordering restoration and refer the defendant for evaluation for civil commitment.

### **Substitute Bill Compared to Original Bill:**

Standards are established for alternative facilities that may be used for restoration treatment. A facility must contract with the Department and be willing and able to provide competency restoration treatment. Jails facilities may be used only during the 2015-2017 biennium if the Department documents an emergent need for beds and a plan to address the emergency, and standards are established for the provision of restoration treatment in a jail.

The first 90-day period of restoration treatment for class A or non-serious class B felony defendants includes only the time the defendant is at the treatment facility and not reasonable time for transport. Specific language is added stating that if a court determines a defendant is unlikely to regain competency, the court may dismiss the charges without ordering restoration and refer the defendant for evaluation for civil commitment.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 26, 2015.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 7 relating to competency-related evaluation and restriction services, which takes effect April 1, 2016.

**Staff Summary of Public Testimony:**

(In support) This is important legislation to address a forensics system that is not working well. There has been an ever increasing demand for forensic services for the past 10 years. The state is in litigation in federal district court claiming that the current wait times are in violation of due process rights. The trial will address how long people can be asked to wait for competency services.

This legislation provides clarity on how the state can provide restoration services and shows that we are trying to find solutions to the lengthy wait times. Restoration in the community will depend on a number of factors, including how compliant a person is with treatment and what support the person has in the community. We know there is a concern about using jails, and we are willing to work on this issue. However, our greatest concern is that we will get a court order requiring the state to meet time limits, and we will not be able to do so with our current facilities. We need to keep our options open.

Clarifying that the restoration time period does not include time for transport to the facility is important to address an inconsistent practice around state. If time for transport is included, it may not allow enough time for restoring the person to competency.

(In support with concerns) The courts have said that it is a legal necessity to address the lengthy wait times, but it is also a moral imperative. Competency restoration in jail is not appropriate. Jails are not therapeutic environments; they are punitive facilities. These people have not been found guilty of any crime and keeping them in jails is constitutionally suspect.

(Opposed) Jail restoration should not be allowed. The court has already found that a hospital emergency room does not provide appropriate mental health treatment, so certainly a jail cannot provide adequate restoration treatment. When you think about all the components that are necessary for an appropriate treatment facility, you quickly realize that jails will not work. We appreciate the need for the legislation, but it is not sufficient on its own. The system needs additional funding. The only reason we need this legislation is because the state has underfunded the system.

It is not appropriate to take away jobs that are traditionally done by state employees and give them to persons who do not have the training or expertise of our members. It is unclear who will be able to be restored outside a hospital setting. The decision will be based on fiscal concerns not public safety concerns.

(Other) We support the premise of restoration in the community but not in jails. A federal judge has said jails are not therapeutic environments. Restoration treatment is more than simply giving people beds. Hospitals provide social workers, trained staff, and other services. To facilitate community restoration, the definition of professional person should include licensed mental health nurses. This bill is premature because there is a court case that will deal with these issues. Excluding the time for transport from the restoration period will disincentivize the Department from transporting the person as soon as possible. The seven-day time period should not be limited to persons who are criminally insane since that is the only guidance on a reasonable time frame.

**Persons Testifying:** (In support) Representative Jinkins, prime sponsor; and Jane Beyer, Department of Social and Health Services.

(In support with concerns) Jim Bloss, National Alliance on Mental Illness.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; Brian Enslow, Washington State Association of Counties; and Rick Hertzog, Washington Federation of State Employees.

(Other) Kari Reardon and Jason Schwarz, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.