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## Judiciary Committee

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### HB 2060

**Title:** An act relating to timeliness of competency evaluation and restoration services.

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

**Sponsors:** Representatives Jinkins and Ormsby.

#### Brief Summary of Bill

- Establishes maximum time limits for the provision of competency-related evaluation and restoration services.
- Establishes affirmative defenses against an allegation that the Department of Social and Health Services has exceeded maximum time limits.
- Requires additional records and information to be provided with a competency referral.

**Hearing Date:** 2/17/15

**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.

##### Competency Evaluations and Restorations.

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

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evaluate and report on the defendant's mental condition. 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.

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. The court may order competency restoration treatment if the defendant is charged with a felony or a non-serious misdemeanor. If a defendant cannot be restored to competency within specified time periods, the criminal case must be dismissed without prejudice. Competency restoration services are provided on an inpatient basis at the state psychiatric hospitals.

### Performance Targets.

In 2012 the Legislature established the following performance targets for the completion of competency related services for criminal defendants:

- seven days for the state hospital to extend an offer of admission to a defendant in pre-trial custody for competency evaluation or restoration treatment, or for evaluation for civil commitment following dismissal of charges;
- seven days for completion of an evaluation in jail and distribution of the evaluation report for a defendant in pre-trial custody; and
- 21 days to complete an evaluation in the community of a defendant released from custody.

The performance target time periods run from the date the state hospital receives court referral and charging documents, discovery, and criminal history information relating to the defendant.

A non-exclusive list of factors that may inhibit the ability of the Department to achieve these performance targets are provided in statute, including: the lack of medical clearance information necessary for admission to the state hospital; the inability to obtain necessary medical information about the defendant that is in the custody of a third party; the lack of availability or participation by counsel, jail or court personnel, interpreters, or the defendant; and an unusual spike in evaluation referrals or the number of defendants needing restoration services.

### **Summary of Bill:**

A maximum time limit of 14 days, with an option for a seven-day extension if needed for clinical reasons, is established for the provision of competency related evaluation and restoration services. The maximum time limit applies to admissions for inpatient competency-related evaluations or restoration treatment, and to completion of a competency evaluation in jail.

Additional records and information are required to be received by the Department before the time periods for performance targets and time limits begin to run. These records and information include mental health and medical records, police records, names and addresses of involved attorneys, information about the alleged crime, and reasons for the referral.

The non-exhaustive list of circumstances under which it is recognized that performance targets might not be met are designated as defenses to an allegation that the Department has not met performance targets or maximum time limits. Two additional defenses are established: the Department does not have access to appropriate space to conduct a jail evaluation; or the defendant asserts legal rights that delay the provision of competency services.

**Appropriation:** None.

**Fiscal Note:** Requested on February 13, 2015.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.