

HOUSE BILL REPORT

HB 2060

As Reported by House Committee On:
Judiciary

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 History:

Committee Activity:

Judiciary: 2/17/15, 2/19/15 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

Staff: Edie Adams (786-7180).

Background:

Incompetent to Stand Trial.

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.

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 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 is 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 Substitute Bill:

Maximum time limits are established for the provision of competency-related evaluation and restoration services:

- 14 days for the Department to offer admission for inpatient competency-related evaluation and restoration services; and
- 14 days for completion of a competency evaluation in jail, with the option to extend the time for another seven days if needed for clinical reasons.

These time limits are to be phased in over the course of one year beginning July 1, 2015.

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.

Substitute Bill Compared to Original Bill:

The substitute bill removes the option to extend the 14-day time limit for admission for inpatient competency-related evaluation or restoration could be extended an additional seven days if needed for clinical reasons.

Appropriation: None.

Fiscal Note: Requested on February 13, 2015.

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

Staff Summary of Public Testimony:

(In support) When the competency performance targets were passed, there was not much research out there on what is an appropriate timeline. Now the data and best practices we have seen indicate that our timelines are not long enough to do adequate evaluations. The bill will bring us more into line with what is happening in the rest of the nation. These timelines are still aggressive and the state is not meeting them now, but it is important to establish a standard for the state to meet.

There is a class action lawsuit in federal court claiming that the state's wait times violate the constitutional rights of defendants. The state recognizes that some people are waiting excess times and those times are indefensible. The National Judicial College recommends that it is reasonable to extend out the period for evaluation to allow time for substance abuse issues to clear and medication to take effect. The state does not have enough forensic evaluators or beds to meet the demand. The early action supplemental budget has money for additional evaluators and beds, but that won't be enough. We cannot meet these standards overnight so we need the phase in.

(Opposed) Extending the competency timelines is unfair and not a good response to what is a human rights tragedy. These defendants have not been convicted of any crime. They have a mental illness and are sitting for extensive time in jails. Judge Peckman in her initial order said that any wait times over seven days are suspect. It is true that this is happening all over the country, but that is not right either. We shouldn't base our law on wrong laws in other states.

The Department has had performance standards in place since 2012 and it has failed to meet them in every single case. The legislation is just a means for the Department to implement further lengthy delay. Courts have been imposing contempt sanctions against the Department for failing to timely evaluate the defendants. The bill allows an extension of the time for clinical reasons, but that term is undefined. The current practice is unacceptable and has been found unacceptable by the judge.

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

(Opposed) David Lord, Disability Rights Washington; and Kari Reardon, Washington Association of Criminal Defense Lawyers and Washington Defense Attorneys.

Persons Signed In To Testify But Not Testifying: None.