
Judiciary Committee

E2SSB 5177

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: Senate Committee on Ways & Means (originally sponsored by Senators O'Ban and Darneille; by request of Department of Social and Health Services).

Brief Summary of Engrossed Second Substitute Bill

- Encourages the Department of Social and Health Services (DSHS) to develop alternative locations for competency restoration services for persons who do not need inpatient hospitalization, and allows restoration services in a city or county jail under certain conditions during the 2015-17 biennium.
- Provides that competency restoration treatment time periods include only the time the defendant is at the treatment facility and do not include reasonable time for transport.
- Removes the expiration of the authority of the DSHS to place a person who is criminally insane in a secure Department of Corrections facility under some circumstances.
- Provides that a statute limiting the correctional confinement of persons under the forensic laws applies only to persons who are criminally insane.
- Allows a prosecutor in a non-felony case where competency to stand trial is at issue to dismiss the case and refer the defendant for evaluation for mental health, substance use, or developmental disability services.
- Establishes an Office of Forensic Mental Health Services (Office) within the DSHS and specifies responsibilities of the director of the Office.

Hearing Date: 3/24/15

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.

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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 Evaluation and Restoration Treatment.

When a defendant's competency is in question, the court must either appoint, or ask the Department of Social and Health Services (DSHS) to designate, a qualified expert to evaluate and report on the defendant's mental condition. The evaluator must assess the defendant in a jail, a 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 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 nonviolent 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 reasonably likely to restore competency. Under limited circumstances the court may order a third period of restoration treatment for up to six months.

A defendant charged with a serious non-felony offense is eligible for one period of inpatient competency restoration for up to 14 days plus any unused evaluation time. This restoration treatment period includes only the time the defendant is at the treatment facility and does not include time for transport to or from the facility.

If a defendant cannot be restored to competency within the specified time periods, the criminal case must be dismissed without prejudice and the defendant must be evaluated for potential civil commitment.

The DSHS has historically provided competency restoration services at the state psychiatric hospitals, although there is statutory authority for restoration treatment to be provided in an alternative facility determined by the DSHS.

Correctional Confinement under 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 is committed to the custody of the DSHS because the person is a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security.

If the DSHS determines that a person who is criminally insane and committed to its custody presents an unreasonable safety risk that is not manageable in a state hospital setting, the DSHS may place the person in a secure facility of the Department of Corrections (DOC). The person

must receive appropriate mental health treatment under a formalized treatment plan, and has the right to periodic evaluation of his or her mental condition and the right to petition for conditional release or release. The DSHS must review the person's placement every three months to determine if the placement remains appropriate. The authority of the DSHS to place a person who is criminally insane in a secure facility of the DOC expires June 30, 2015.

A statute provides that a person confined under the forensic laws must not be incarcerated 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.

Forensic System Report.

In 2013 the DSHS contracted with an independent consultant, Groundswell Services Inc. (Groundswell), to conduct a review of the state's provision of forensic mental health services and make recommendations as to whether and how the state's forensic mental health system should be modified. In 2014 the DSHS submitted Groundswell's final report, entitled *Forensic Mental Health Consultant Review Final Report*, which makes a number of recommendations for reform of the state's forensic mental health system. One recommendation is that Washington should establish a centralized Office of Forensic Mental Health Systems to oversee all forensic evaluation services, assist hospitals and community agencies to implement best practice forensic treatment, work across systems to ensure an integrated approach to the forensic population, and establish adequate data management resources to monitor forensic services and appropriately allocate resources.

Summary of Bill:

Competency Restoration Provisions.

The Legislature encourages the DSHS 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 for competency restoration may include community mental health providers or other local facilities that contract with the DSHS and are willing and able to provide competency restoration treatment. During the 2015-2017 biennium, the DSHS may contract with one or more cities or counties to provide competency restoration treatment in a city or county jail if the city or county jail is willing to serve as a location for restoration treatment and if the DSHS determines that there is an emergent need for beds and documents the justification, including a plan to address the emergency.

Patients receiving competency restoration treatment in a jail must be physically separated from other jail populations, must interact only with treatment staff and not jail staff, and must be provided as much as possible with 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. Specific language is added to restoration statutes stating that if a court determines a defendant is unlikely

to regain competency, the court may dismiss the charges without ordering restoration treatment and refer the defendant for evaluation for civil commitment.

Correctional Confinement under Forensic Laws.

The expiration of the DSHS's authority to place a person who is criminally insane in a secure facility of the DOC if the person presents an unreasonable safety risk not manageable in a state hospital setting is removed.

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

Diversion of Non-Felony Defendants.

If the issue of competency to stand trial is raised in a non-felony case, the prosecutor may dismiss the charges without prejudice and refer the defendant for assessment by a mental health professional, chemical dependency professional, or developmental disabilities professional to determine appropriate service needs for the defendant. This provision does not apply if the defendant is currently charged with or has a previous conviction for a serious violent offense or sex offense.

Office of Forensic Mental Health Services.

An Office of Forensic Mental Health Services (Office) is established within the DSHS in order to prioritize goals of accuracy, prompt service to the court, quality assurance, and integration with other services. The Office must have a clearly delineated budget separate from overall budget for state hospital services.

The Office must be led by a director on the level of at least a deputy assistant secretary within the DSHS. The Director after a reasonable period of transition must have responsibility for the following functions:

- operational control of all forensic evaluation services including budget allocation;
- training of forensic evaluators;
- development of a system to certify forensic evaluators and monitor the quality of forensic evaluation reports;
- communication with courts, jails, and community mental health programs;
- coordination with state hospitals to develop best practices for services unique to forensic patients;
- promotion of congruence across state hospitals where appropriate and promote interventions that flow smoothly into community interventions;
- coordination with appropriate entities regarding community treatment and monitoring of persons on conditional release;
- oversight of state-wide forensic data collection and analysis; and
- oversight of the development, implementation, and maintenance of community forensic programs and services.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 11 which, because of a prior delayed effective date, takes effect April 1, 2016.