

# HOUSE BILL REPORT

## SSB 5889

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**As Passed House:**  
March 9, 2015

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

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

**Sponsors:** Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senators O'Ban and Miloscia).

**Brief History:**

**Committee Activity:**

None.

**Floor Activity:**

Passed House: 3/9/15, 84-14.

**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.

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**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.

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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.*

### 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.

Legislation enacted in 2012 established the following performance targets for the completion of competency-related services for criminal defendants:

- seven days for the state hospital to offer admission to a defendant for inpatient competency-related evaluation or restoration services;
- seven days for completion of a competency evaluation in jail and distribution of the evaluation report for a defendant in pre-trial custody; and
- 21 days to complete a competency 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:**

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

- 14 days for the state hospital to offer admission to a defendant for inpatient competency-related evaluation or 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. Current performance targets for competency-related services are retained.

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 police records, names and addresses of involved attorneys, name of the judge ordering the evaluation, and information about the alleged crime.

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 private space to conduct a jail evaluation; or the defendant asserts legal rights that delay the provision of competency services.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

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