

SENATE BILL REPORT

SB 5177

As of February 21, 2015

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: Senators O'Ban and Darneille; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 1/20/15, 2/05/15 [DPS-WM].

Ways & Means: 2/18/15.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5177 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Hargrove and Padden.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sandy Stith (786-7710)

Background: Competency restoration treatment may be provided to criminal defendants who have been judicially found to be incompetent to stand trial. When a defendant is ordered to receive competency restoration treatment, The Secretary of the Department of Social and Health Services (DSHS) may place the defendant in any appropriate facility for treatment for specified time periods. Currently and historically, DSHS provides competency restoration treatment exclusively at state hospitals.

Incompetent to stand trial means a defendant does not have the present capacity to understand the criminal proceedings against them, or sufficient ability to assist in their own

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defense. Competency restoration treatment is treatment targeted to restore a defendant to competency, so that the defendant may be placed on trial.

A felony defendant may be committed for up to three periods of competency restoration treatment. The first period is either 45 days if the defendant is charged with a class C or nonviolent class B felony, or else 90 days. The court must conduct a hearing on or before the last day of this period to determine whether the defendant has been restored to competency. The defendant may demand to have competence determined by jury.

If the defendant is again found incompetent, the court may order a new competency restoration period for up to 90 days, followed by a hearing. The extension of the treatment period is not allowed if DSHS determines that the defendant's incompetence is solely the result of a developmental disability and competency is not reasonably likely to be regained during the extension. If at the end of this period the defendant is again found incompetent, the court must dismiss charges without prejudice and order the defendant to be committed to a state hospital for the purpose of evaluation for civil commitment, unless the court finds that (1) the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (2) there is a substantial probability that the defendant will regain competence within a reasonable period of time. In this case the court may order a final period of competency restoration treatment for up to 180 days, after which the court must hold a final competency hearing as described in this paragraph.

The competency restoration process for a misdemeanor defendant is similar, except that there is one period of competency restoration treatment available for up to 14 days, in addition to any unused time of the evaluation. A jury determination of competency is not available. If competency restoration is not successful, and the defendant is in custody and charged with a serious misdemeanor, the court must dismiss the charges without prejudice and detain the defendant to an evaluation and treatment facility for the purpose of an evaluation for civil commitment.

A person is criminally insane when they have been acquitted of a crime by reason of insanity by court or jury and committed to a state hospital on the basis of danger to other persons or substantial likelihood of committing criminal acts jeopardizing public safety or security.

A person who is awaiting placement in a treatment program or a court hearing under chapter 10.77 RCW may be confined for no more than seven days.

The state of Washington is currently being sued in federal court concerning allegations that waiting times for competency evaluation and competency restoration services violate the rights of defendants under the federal Constitution and the Americans With Disabilities Act. In December the court ruled that current wait times violate the constitutional rights of defendants. Further court proceedings are scheduled for March 2015.

Summary of Bill (Recommended Substitute): The Legislature encourages DSHS to develop, on a phased-in basis, alternative locations and increased access to competency restoration services for individuals who do not require inpatient hospitalization. This may include community mental health providers or other local facilities that are willing and able

to provide appropriate treatment under contract. During the 2015-17 fiscal biennium, county jails may be used for this purpose if the Secretary of DSHS determines there is an emergent need for beds and documents the justification, including a plan to address the emergency. Competency restoration patients must be physically separated from other populations at the jail, must interact only with treatment staff and not jail staff, and must be provided as much as possible with a therapeutic environment. A new secure facility developed for inpatient treatment of defendants ordered to receive competency restoration may not be sited within 500 feet of the facilities and grounds of a public or private school.

Time periods for competency restoration treatment for felony and misdemeanor defendants must include only time that the defendant is at the facility receiving treatment and do not include reasonable time for transport.

A statutory seven-day time limit for placement in a treatment program or a court hearing under chapter 10.77 RCW is specified to apply only to persons who are criminally insane.

EFFECT OF CHANGES MADE BY HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE (Recommended Substitute): During the 2015-17 fiscal biennium, county jails may be used for competency restoration if the Secretary of DSHS determines there is an emergent need for beds and documents the justification, including a plan to address the emergency. Competency restoration patients must be physically separated from other populations at the jail, must interact only with treatment staff and not jail staff, and must be provided as much as possible with a therapeutic environment. A new secure facility developed for inpatient treatment of defendants ordered to receive competency restoration may not be sited within 500 feet of the facilities and grounds of a public or private school. A facility must be willing and able to provide appropriate treatment under contract.

Appropriation: None.

Fiscal Note: Requested on January 17, 2015.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services, Mental Health & Housing): PRO: DSHS' mission is to support sustainable recovery, independence, and wellness, including for the forensic population. In the past three years, the number of court referrals for forensic services has increased by 30 percent. We have serious concerns about wait times for services. This bill would clarify the alternative sites in which restoration services could be provided. We are aware of concerns about using jails for this purpose. Four to six weeks are required for trials of modern antipsychotic drugs. We are considering outpatient models, secure or semi-secure residential treatment models, and county jail-based models.

CON: We agree with the goal to speed the process of competency restoration, and of expanding restoration alternatives. We oppose allowing competency restoration in jails. Jails are not therapeutic environments. Courts have distinguished between jails and

treatment facilities, and found jail conditions unconstitutional. Risk of suicide, decompensation, and victimization is higher in jail. We need better separation between mental health and criminal justice. Defendants should not stay in jail while competency is being determined. In our rural county, our corrections staff do not have the training to handle competency restoration. This bill is before you due to resource concerns. State hospitals can provide this treatment with sufficient resources. State hospitals provide the best therapeutic environment based on the staff, training, environment, and a physical plant which protects the safety of patients and staff. The bill lacks specificity as to who qualifies for community restoration. We need a plan to increase infrastructure to meet capacity needs. State hospitals are not the only solution, but they are a necessary part of the solution.

OTHER: Competency service delays are awful. Defendants can be locked down 23 hours a day, sometimes in real danger. Competency restoration treatment should be eliminated for misdemeanor defendants. Civil commitment is the appropriate system for persons with nonviolent behavior and low functioning. Please amend the bill to require DSHS to contract with facilities that are willing and able to provide treatment. My mentally ill felony clients are often not criminals; they are responding to their illness. Outpatient competency restoration is sufficient. Earlier access to community mental health treatment could prevent issues from occurring. Imagine the outcry if this happened to cats and dogs. Wait times for competency restoration must be shortened. We agree with using community facilities, but not use of jails. Please amend the definition of expert to include licensed mental health counselors to help provide community restoration services. It takes 45–60 days for a defendant in jail to receive a competency evaluation in eastern Washington. Please don't amend the seven-day time limit, because it helps us get evaluations faster.

Persons Testifying (Human Services, Mental Health & Housing): PRO: Jane Beyer, DSHS.

CON: David Hocraffer, King County Dept. of Public Defense; Paul Pastor, Pierce County Sheriff; Rick Scott, Grays Harbor Sheriff's Office; Matt Zuvich, WA Federation of State Employees; Brian Enslow, WA Assn. of Counties.

OTHER: Christine Jackson, King County Dept. of Public Defense; Lisa Thatcher, WA State Hospital Assn.; Margaret Brammall, WA Defender Assn., WA Assn. of Criminal Defense Attorneys; Sandi Ando, National Alliance on Mental Illness WA; Jon Tunheim, Thurston County Prosecutor, WA Assn. of Prosecuting Attorneys; David Lord, Disability Rights WA; Kari Reardon, Spokane County Public Defender's Office.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: The bill is DSHS-requested legislation. There is strong interest in increasing timeliness of competency evaluation and restoration services. Currently the only place restoration can be done is at the state hospitals. We believe we can balance public safety and treatment needs because not all people referred need to be in a secure state hospital facility. Also, such state secure hospital facilities have limited capacity. Looking to other states for fiscal information would be prudent as Washington has no alternative model. We are trying to model several different options.

CON: Strong interest is expressed in competency restorations. We believe non-violent felonies and misdemeanors can be done in evaluation and treatment centers, but jails are not therapeutic environments. We have an amendment if it is to be done in a jail: no contact with jail staff. We request that jails be taken out of this bill. Amount is very difficult to address if assessed in a jail as the authorities at large would need to build a psychiatric unit; jails aren't therapeutic environments. We should be cautious about changing the policy of doing evaluations or restorations outside of the state hospitals. This is about supply and demand and the demand is greater than the supply of people able to do the work at the state hospitals. We need to build up the supply of people able to do the work. The agency doesn't have a plan, even though the agency says it will get us out two or three years. This is our work. The fiscal proposition is untenable. It will spend more money trying to make jails a therapeutic environment. We are supportive of community alternatives. Jails are punitive in nature. We urge you to look at other environments instead. The bill as amended has a bifurcated exemption. Community mental health alternatives are exempt if they are willing and able, but jails are at the discretion of the Secretary. This is the fiscal problem. Bringing jails up to therapeutic standards would cost millions of dollars. We are opposed to the change in timelines in the bills for when restoration times start and who pays for them. Defendants can wait for over two months in jails to be admitted to the hospital after an order has been signed. They are being paid for by the counties while they are in the jails. This is a constitutional problem as well as a budget problem. We need more money for beds. We are 47th out of 50 states for beds. Evaluators are not paid enough. Overall we would hope you would do no harm.

OTHER: We are opposed to allowing the Secretary to direct people to jails.

Persons Testifying (Ways & Means): PRO: Jane Beyer, DSHS.

CON: Judy Snow, Pierce County, Jail Mental Health Manager; Al Rose, Pierce County, Director of Justice Services; Seth Dawson, The National Alliance on Mental Illness (NAMI), NAMI WA; Matt Zuvich, WA Federation of State Employees; Shankar Narayan, American Civil Liberties Union of WA; Cassie Trueblood, WA Defender Assn.; Brian Enslow, Wa State Assn. of Counties; David Lord, Disability Rights WA; Marie Jubie, Stephen Warning, citizens.

OTHER: Mitch Barker, WA Assn. of Sheriffs and Police Chiefs.