

SENATE BILL REPORT

E2SSB 5177

As Passed Senate, March 4, 2015

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

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 History:

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

Ways & Means: 2/18/15, 2/23/15 [DP2S, DNP, w/oRec].

Passed Senate: 3/04/15, 44-5.

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

Majority Report: That Second Substitute Senate Bill No. 5177 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Bailey, Becker, Billig, Brown, Hatfield, Hewitt, O'Ban, Padden, Schoesler and Warnick.

Minority Report: Do not pass.

Signed by Senators Conway and Hasegawa.

Minority Report: That it be referred without recommendation.

Signed by Senators Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Fraser, Kohl-Welles and Parlette.

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.

Staff: Sandy Stith (786-7710)

Background: Forensic mental health services are evaluation and treatment services related to competence to stand trial (CST) and criminal insanity. Forensic mental health services are administered and provided by staff from Washington's three state hospitals: Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center. Administrative oversight and support for the state hospitals is provided by the Department of Social and Health Services (DSHS).

CST means that a party to a criminal proceeding or the court has raised an issue as to whether a criminal defendant has the present capacity to understand the nature of the charges against the defendant or to assist in their own defense. Whenever CST is raised in a criminal case, the legal proceedings must be stayed until a mental health expert can evaluate the defendant and report on the defendant's mental state. If a defendant is found incompetent to stand trial (IST), the court may order the defendant to receive up to 45 or 90 days of competency restoration treatment if the charge is a felony, and up to 14 days of competency restoration treatment, plus any unused time from the evaluation period, if the charge is a nonfelony that is a serious offense. Subsequent competency restoration periods are available for felony defendants.

A nonfelony criminal offense is a misdemeanor or gross misdemeanor. Standards to determine whether a nonfelony is a serious offense are delineated by law. If a nonfelony defendant remains IST after all allowable periods of competency restoration treatment have been exhausted, the court must dismiss the charges without prejudice and may detain the defendant to an evaluation and treatment facility for a civil commitment evaluation or refer the defendant for evaluation by a designated mental health professional.

When a defendant is ordered to receive competency restoration treatment, DSHS may place the defendant in an appropriate facility for treatment. Currently and historically, DSHS provides competency restoration treatment exclusively at state hospitals. Competency restoration treatment is treatment targeted to restore a defendant to competency, so that the defendant may be placed on trial.

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.

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. In 2010 the Legislature passed Engrossed Senate Bill 6610. Section 2 of this bill authorizes DSHS to place a person who has been committed based on criminal insanity in a secure facility operated by the Department of Corrections (DOC), if the Secretary of DSHS determines in writing that the person presents an unreasonable safety risk which is not manageable in a state hospital setting. The person must receive appropriate mental health treatment governed by a formalized treatment plan targeted at mental health rehabilitation

needs, and be afforded due process rights to petition the courts for conditional or final release. DSHS must submit a report to the Legislature every six months regarding the use of this authority. The authority granted under this section of law expires on June 30, 2015.

In 2014 DSHS published a report entitled Forensic Mental Health Consultant Review Final Report. This report was prepared by Groundswell Services, Inc., a consortium of national experts in forensic mental health services based at the University of Denver, University of Virginia, and University of Massachusetts. Development of this report was required and funded by the Legislature pursuant to Second Substitute Senate Bill 5732 in 2013. The report makes several recommendations for reform of Washington's forensic mental health system, including a recommendation that Washington should establish a centralized Office of Forensic Mental Health Services with adequate authority and data-management capacity.

Summary of Engrossed Second Substitute Bill: The Legislature encourages DSHS to develop, on a phased-in basis, alternative locations and increased access to competency restoration treatment 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, DSHS may contract with one or more counties or cities to provide competency restoration services in a county or city jail, if the jail is willing and able to serve as a location for competency restoration and 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.

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, and not persons ordered to receive competency restoration treatment.

The expiration date is removed from the authority granted to the Secretary of DSHS to place a person committed as criminally insane who has been determined to present an unreasonable safety risk that is not manageable in a state hospital setting in a secure facility operated by DOC.

An Office of Forensic Mental Health is established within DSHS. This office must be led by a director on at least the level of deputy assistant secretary within DSHS who must, after a reasonable period of transition, have the following responsibilities:

- operational control of all forensic evaluation services, including specific budget allocation separate from the budget for state hospital services;
- training forensic evaluators;
- developing a system to certify forensic evaluators and monitor the quality of forensic evaluation reports;

- acting as liaison with courts, jails, and community mental health programs to ensure proper flow of information, coordination of logistical issues, and solving problems in complex circumstances;
- coordinating with state hospitals to identify and develop best practice recommendations and curricula for services unique to forensic patients;
- promoting congruence across state hospitals where appropriate and interventions which flow smoothly into community interventions;
- coordinating with entities regarding community treatment and monitoring of persons on conditional release;
- overseeing forensic data collection and analysis; and
- overseeing development and implementation of community forensic programs.

A prosecutor may dismiss a nonfelony charges without prejudice if the issue of CST is raised by the court or a party and refer the defendant for assessment by a mental health professional, chemical dependency professional, or developmental disabilities professional to determine the appropriate service needs of the defendant. Defendants who have a current charge or prior conviction for a serious violent offense or sex offense are excluded from this provision.

Appropriation: None.

Fiscal Note: Available.

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.

Persons Signed In To Testify But Not Testifying (Human Services, Mental Health & Housing): No one.

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.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.