

FINAL BILL REPORT

2E2SSB 5177

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Synopsis as Enacted

Brief Description: Concerning forensic mental health services.

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

Senate Committee on Human Services, Mental Health & Housing

Senate Committee on Ways & Means

House Committee on Judiciary

House Committee on Appropriations

Background: Forensic mental health services are evaluation and treatment services related to competency to stand trial (CST) and criminal insanity. Forensic mental health services are administered by staff from Washington's three state hospitals: Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center.

The issue of CST arises when a party to a criminal proceeding or the court raises the issue of whether a criminal defendant has the present capacity to understand the nature of the charges or to assist in their own defense. Whenever CST is raised, 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 court finds that a defendant is incompetent to stand trial (IST), the court may order the defendant to receive competency restoration treatment. Competency restoration periods vary depending on whether the defendant is charged with a felony or a misdemeanor, and by the type of felony or misdemeanor charge.

DSHS may place a defendant who is ordered to receive competency restoration treatment in an appropriate treatment facility. Historically, DSHS has provided competency restoration treatment exclusively at state hospitals.

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. The report makes several recommendations, including a recommendation that Washington should establish a centralized Office of Forensic Mental Health Services.

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.

In 2014, the state was sued regarding the timeliness of services related to CST. In April 2015, the United States District Court for the Western District of Washington found that waiting times for CST services violate the substantive due process rights of criminal defendants and established seven days as the maximum justifiable period of incarceration absent an individualized finding of good cause.

Summary: 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 and must be provided as much as possible with a therapeutic environment. DSHS must develop a screening process to determine which individuals are safe to receive competency restoration treatment outside the state hospitals in collaboration with counties and courts.

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 clerk of court, prosecutor, and jail administrator must provide certain documents to the state hospital within 24 hours of the signing of an order related to CST. Jails must transport a defendant to a state hospital for CST services within one day of an offer of admission, and must arrange for CST evaluators to have reasonable, timely, and appropriate access to defendants.

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 charge without prejudice if the issue of CST is raised 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 violent offense or sex offense are excluded from this provision.

The expiration date of DSHS' obligation to reimburse a county for the cost of appointing an expert to evaluate CST instead is extended three years until June 30, 2019. Criteria for triggering this obligation are expanded to include the situation in which DSHS did not perform at least one third of in custody CST evaluations for defendants in the county in the most recent quarter. Counties which utilize this provision must maintain certain data elements and share data with DSHS upon request.

The Administrative Office of the Courts must develop standard court forms for forensic mental health services and involuntary civil commitment by December 31, 2015. A court video testimony work group is established to consider and facilitate the use of video testimony by CST evaluators and state hospital representatives. An emergency clause is added to Section 1, chapter 253, Laws of 2015 (House Bill 1599).

Votes on Final Passage:

Senate 44 5

First Special Session

Senate 46 1

House 81 12

Effective: August 27, 2015
 July 1, 2015 (Section 1-6, 8-15)
 June 10, 2015 (Section 7)
 April 1, 2016 (Section 16)