

# SENATE BILL REPORT

## 2SSB 5403

---

---

As Passed Senate, March 5, 2015

**Title:** An act relating to competency to stand trial evaluations.

**Brief Description:** Concerning competency to stand trial evaluations.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Conway, O'Ban, Darneille, Cleveland, Rivers and Benton).

**Brief History:**

**Committee Activity:** Human Services, Mental Health & Housing: 1/29/15, 2/05/15 [DPS-WM].

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

Passed Senate: 3/05/15, 48-0.

---

### SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

**Majority Report:** That Substitute Senate Bill No. 5403 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.

**Staff:** Kevin Black (786-7747)

---

### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5403 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; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hatfield, Hewitt, Kohl-Welles, O'Ban, Padden, Parlette, Schoesler and Warnick.

**Staff:** Sandy Stith (786-7710)

**Background:** A criminal defendant is incompetent to stand trial when, as a result of a mental disease or defect, the defendant does not have the capacity to understand the

---

*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.*

proceeding against the defendant or sufficient ability to assist in the defense. Whenever there is reason to doubt the competency of a defendant, the court must stay the criminal proceedings and either appoint a qualified expert or request the Department of Social and Health Services (DSHS) to designate an expert to evaluate the mental condition of the defendant. State law provides for a seven-day performance target to complete a competency evaluation in jail for a defendant who is in custody.

In 2013 the Legislature passed Engrossed Substitute Senate Bill 5551, which provides that until June 30, 2016, DSHS must reimburse a county for the cost of appointing an expert to complete a competency evaluation for a defendant in jail if DSHS has not meet its seven-day performance target for the timeliness of in-jail competency evaluations for at least 50 percent of defendants in the county during the most recent quarter, as determined by DSHS' most recent quarterly report or confirmed by records maintained by DSHS. The expert must be appointed from a list of qualified persons assembled with the participation of prosecutors and the defense bar in the county. Reimbursements must be provided within appropriated funding, and must not be less than state's cost for providing the evaluation.

According to records provided by DSHS, it performed 2978 initial competency evaluations for defendants in 2013, of which 2102 were performed in jail.

**Summary of Second Substitute Bill:** If during any quarter, DSHS does not perform one-third as many competency evaluations as evaluations performed by appointed experts in a particular county, DSHS must reimburse that county for its cost to appoint experts to perform the competency evaluations. Language is restored requiring these reimbursements to be provided within funds appropriated for this specific purpose. The expiration date for this section of law is extended three years, until June 30, 2019.

**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 Proposed Substitute as Heard in Committee (Human Services, Mental Health & Housing):** PRO: This program has been successful at shortening the time for competency evaluations in Pierce County in 270 cases. Other counties are interested in implementing this practice. Defenders, prosecutors, and judges believe this has been helpful. Ninety-seven percent of evaluations have been completed within seven days; the exceptions were all special circumstances. By comparison, in 2014 it took the state hospital an average of over 18 days to complete evaluations in Pierce County, compared to under five days with this program. This should be a stopgap measure; we are doing it because we see people languishing in the jail. DSHS is not meeting the timeliness targets to complete competency evaluations. The Governor has requested funding for three new evaluators to correct this. This program has helped improve the timeliness of evaluations, which we welcome. Please retain language making expenditures subject to the

availability of appropriated funds. All counties benefit from utilization of this program, even in one county, because it eases pressure on all state evaluations.

OTHER: We object to outsourcing this work, which is ours, to the private sector. We acknowledge there is a problem born out of a lack of resources and capacity in our system. We prefer an extension of the expiration date by two years, instead of three. Please retain the language making expenditures subject to the availability of appropriated funds.

**Persons Testifying (Human Services, Mental Health & Housing):** PRO: Senator Conway, prime sponsor; Al Rose, Pierce County Executive's Office; Judy Snow, Pierce County Jail; Tim Hunter, DSHS; Brian Enslow, WA State Assn. of Counties; David Lord, Disability Rights WA.

OTHER: Matt Zuvich, WA Federation of State Employees.

**Staff Summary of Public Testimony on Substitute as Passed by Human Services, Mental Health & Housing (Ways & Means):** PRO: Currently only one county is implementing this. With the early supplemental and if this bill moves forward, it is anticipated that numerous other counties will take advantage of this. This is a modest investment and well worth it. This bill helps DSHS deal with competency evaluation backlog. This is the subject of a federal class action and indicates progress. Pierce County has done about 280 evaluations, all within seven days. The bill has fiscal safeguards, with DSHS paying fair and reasonable costs. We ask that subject-to-availability language be removed from the bill as the department has had a difficult time completing these over the years. This has been a successful program. This is a stopgap measure. As soon the state hospital can get their program running, the county is willing to give this function up. We request that subject-to-availability language be put back in. It makes sense to spend a little bit of money on evaluators to avoid longer time in jail. If other counties could do this, it would help across the state.

OTHER: We are working with stakeholders. There is more demand than supply when it comes to evaluators. We are trying to put more evaluators in place and be competitive so they can keep them. The sunset date is scheduled for three years. It may be more appropriate to be two years.

**Persons Testifying (Ways & Means):** PRO: Judy Snow, Pierce County, Jail Mental Health Manager; Al Rose, Pierce County, Director of Justice Services; Jane Beyer, DSHS; Brian Enslow, WA State Assn. of Counties; David Lord, Disability Rights WA.

OTHER: Matt Zuvich, WA Federation of State Employees.