

SENATE BILL REPORT

SB 5889

As of February 13, 2015

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

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

Sponsors: Senators O'Ban and Miloscia.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/10/15.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Kevin Black (786-7747)

Background: A criminal defendant is incompetent to stand trial (IST) if the defendant does not have present ability to understand the nature of the criminal proceedings against the defendant or to assist defense counsel. If any party to the criminal proceeding or the court raises competency to stand trial (CST), the court must stay the criminal proceedings and appoint a qualified expert or ask the Department of Social and Health Services (DSHS) to designate an expert to evaluate the mental condition of the defendant. If the court finds the defendant to be IST after the evaluation, the court may order any felony defendant and most nonfelony defendants to undergo competency restoration treatment. Competency restoration treatment is currently provided exclusively on an inpatient basis by the state at one of Washington's state hospitals.

Washington law establishes performance targets for the timeliness of the completion of CST evaluations. These targets are as follows:

- seven days to extend an offer of admission to a state hospital for a defendant to receive inpatient services related to CST, including evaluation, restoration, or a civil commitment evaluation following dismissal of charges;
- seven days to complete a CST evaluation in jail, including distribution of the evaluation report; and
- 21 days to complete a CST evaluation in the community.

The time periods measured in the performance targets run from the date at which the state hospital receives the court referral and supporting information relating to the defendant. The Legislature recognizes that performance targets may not be achievable in all cases, and

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recognizes a nonexclusive list of circumstances which may place achievement of a performance target out of reach, including lack of medical clearance for the defendant to be admitted to the state hospital, the need to acquire medical history information related to the defendant in the custody of a third party, lack of availability or cooperation by counsel, jail or court personnel, interpreters, or the defendant, and unusual spikes in the demand for CST services. These performance targets do not create an entitlement or cause of action related to the timeliness of CST services, and may not provide the basis for a contempt sanction or a motion to dismiss criminal charges.

On April 23, 2014, the Joint Legislative Audit & Review Committee issued an audit report reviewing the timeliness of forensic services provided by DSHS in comparison to the performance targets. It found that DSHS is not consistently meeting its performance targets, or assumed evaluator staffing and productivity levels. The report stated that DSHS has struggled to provide accurate and timely performance information.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Maximum time limits are established for the completion of CST services:

- 14 days to extend an offer of admission to state hospital for a defendant to receive inpatient services related to CST; and
- 14 days to complete a CST evaluation in jail, plus an additional seven-day extension to complete the evaluation if necessary for clinical reasons at the determination of DSHS.

These maximum time limits must be phased in over a one-year time period beginning July 1, 2015. The seven-day performance targets for completion of these services are retained.

The list of documents that must be provided with a referral for CST evaluation is increased to specifically include mental health and medical records, police reports, the names and addresses of the attorneys, the name of the judge ordering the evaluation, information about the alleged crime, and a summary of the reasons for the evaluation request.

The nonexclusive list of circumstances in which the Legislature recognizes that performance targets may not be achievable are recharacterized as affirmative defenses which the state may offer to defend against an allegation that the state has exceeded maximum time limits. This list is increased by the addition of two circumstances: (1) DSHS does not have access to appropriate private space to conduct a competency evaluation for a defendant in pretrial custody; and (2) the defendant asserts legal rights that result in a delay in providing competency services.

Appropriation: None.

Fiscal Note: Requested on February 7, 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: PRO: The state is facing a class action federal lawsuit over wait times for competency services. We agree with the federal court that some persons are waiting excessive periods of time in jail for these services, and that some of these long wait times are indefensible. We believe the timelines in the bill are consistent with the constitutional standards at issue in the litigation. The National Judicial College has published guidelines calling for evaluations for misdemeanor defendants within 15 days, and for felony defendants within 21 to 30 days. Clinical reasons for delaying completion of a competency evaluation may include situations where evaluation of competency is complicated by the effect of illegal drugs, and situations where time is needed to determine whether prescribed medicines are having their intended effect. Having one year to phase in services with measurable progress reports is essential. DSHS has requested funding to support these services in the supplemental budget.

CON: We are concerned about the impact of increased time in jail on defendants with mental illness. Jails are not places for treatment. Seven days should remain the standard. The additional documents specified to be submitted with the competency referral are not necessary. Discovery, police reports, and affidavits of probable cause largely mean the same thing. Mental health records are not within the attorney's control and their absence should not delay the evaluation. The federal judge has ruled that any period of time beyond seven days is suspect. We recommend limiting the extension for special circumstances to five days. A maximum time limit of 28 days for evaluations in the community should be included. The bill should be amended to strike subsection (5) of RCW 71.05.068 so that sanctions are available when the state doesn't meet maximum time limits. Without a remedy, the law does not have teeth. What will fix this issue most is fully funding Western State Hospital. Providing outpatient forensic services would also be helpful.

Persons Testifying: PRO: Jane Beyer, DSHS.

CON: David Lord, Disability Rights WA; Jason Schwarz, WA Defender Assn., WA Assn. of Criminal Defense Lawyers.