

FINAL BILL REPORT

SSB 5889

C 5 L 15

Synopsis as Enacted

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

Sponsors: Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senators O'Ban and Miloscia).

Senate Committee on Human Services, Mental Health & Housing
Senate Committee on Ways & Means
House Committee on Judiciary

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 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

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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: 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 police reports, the names and addresses of the attorneys, the name of the judge ordering the evaluation, and information about the alleged crime.

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.

Votes on Final Passage:

Senate	48	1
House	84	14

Effective: July 24, 2015