

SENATE BILL REPORT

SHB 1100

As Reported by Senate Committee On:
Behavioral Health Subcommittee to Health & Long Term Care, March 29, 2019
Ways & Means, April 9, 2019

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

Brief Description: Evaluating competency to stand trial.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representative Jinkins).

Brief History: Passed House: 3/11/19, 98-0.

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care:
3/29/19 [DP-WM, w/oRec].

Ways & Means: 4/03/19, 4/09/19 [DP].

Brief Summary of Bill

- Extends authority for the Department of Social and Health Services (DSHS) to reimburse a county for the cost of appointing a local competency evaluator until June 30, 2022.
- Requires DSHS to provide notice to counties regarding their eligibility for reimbursement in the upcoming quarter two weeks after the end of the current quarter.
- Excludes municipal court cases from the eligibility calculation for county reimbursement.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Frockt and O'Ban.

Minority Report: That it be referred without recommendation.

Signed by Senator Darneille.

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: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Travis Sugarman (786-7446)

Background: Competency to Stand Trial. Court decisions establish that a person cannot constitutionally be tried for a criminal offense unless they are competent to stand trial. A person is incompetent to stand trial if they lack the current capacity to understand the proceedings against them or do not have the ability to assist in their own defense. If any party to a criminal case raises doubts about a defendant's competency to stand trial, the criminal proceedings must be stayed for a competency evaluation by a forensic mental health expert to assist the court in determining if the defendant is competent to stand trial. The state employs forensic mental health experts at Western State Hospital, Eastern State Hospital, and a satellite location in Seattle who travel to local jails at no charge to cities and counties to perform competency evaluations for defendants who are in custody. These experts also perform competency evaluations for defendants who are released to the community and for a smaller number of patients who are admitted to a state hospital, or other facility contracted by DSHS, for an inpatient competency evaluation.

Timeliness of Competency Evaluations. In 2012, Washington established a statutory performance target of seven days to complete a competency evaluation for a defendant in custody. In 2014, the state was sued in federal district court in the case of *Trueblood v. DSHS* and in 2015 was found liable for imposing excessive wait times on in-custody defendants who are waiting to receive competency evaluation and restoration services. The court found the state in contempt for continued noncompliance in 2017, and subsequently assessed over \$83 million in fines before the state reached a settlement with plaintiffs, approved in December 2018. The settlement obligates the state to take numerous actions including hiring 18 additional competency evaluators and, during the 2019 legislative session, to work to achieve legislative changes reducing the number of people ordered to receive competency evaluation and restoration services. The most recent court monitoring report posted by DSHS, dated February 28, 2019, indicates an average time for completion of a jail-based competency evaluation in Washington of 11.6 days within the Western State Hospital catchment area and 14.5 days within the Eastern State Hospital catchment area. The reported average waiting time for transportation for competency restoration services, which also has a seven-day performance target, was 59 days statewide.

County Authority to Appoint a Local Evaluator. In 2013, the state required DSHS to reimburse a county for the expense of appointing a local expert to perform a competency evaluation, instead of the state expert, subject to appropriation and in an amount determined to be fair and reasonable by DSHS, which is at least equivalent to the cost of a DSHS

evaluation. The local expert must be chosen from a list approved by the defense and prosecuting attorney. To qualify for this reimbursement, the county must have performed more than two-thirds of the competency evaluations in the most recent quarter, or DSHS must have failed to meet its seven-day performance target in at least half of its evaluations in the county in the most recent quarter. The authority for DSHS to reimburse a county for appointment of an evaluator was extended by the Legislature in 2015 until June 30, 2019.

Summary of Bill: The expiration of authority for DSHS to reimburse a county for the cost of appointing a local expert to perform a competency evaluation for a person in custody is extended for three years, from June 30, 2019, to June 30, 2022.

The methodology for determining eligibility for this cost reimbursement is revised to exclude municipal court cases. DSHS must provide notice informing counties of their reimbursement eligibility two weeks after the end of the current quarter, and notify the counties of any delays in providing notification. A county is eligible for reimbursement for any evaluations assigned prior to this notification.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on June 30, 2019.

Staff Summary of Public Testimony (Behavioral Health Subcommittee to Health & Long Term Care): PRO: This bill extends the sunset provision for the local evaluation program and makes a few changes to support the extension based on our experience with the program. We worked on these changes with DSHS and believe they are supportive. This program has worked well in Pierce County since 2015, although it is not limited to this county. We get the evaluations done in an average of seven days, instead of approximately twelve days.

Persons Testifying (Behavioral Health Subcommittee to Health & Long Term Care): PRO: Elizabeth Martin, Pierce County Superior Court.

Persons Signed In To Testify But Not Testifying (Behavioral Health Subcommittee to Health & Long Term Care): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: Pierce County has used this option the most. I believe we billed \$249,000 in 2018. It is a win-win-win for Pierce County because it saves us jail time. It is a win for DSHS because it takes burdens off their shoulders, and particularly it is a win for the defendants who are suffering from mental illness who would otherwise languish in jails waiting for treatment. This allows it to get done faster and get to the crux of the matter in the Trueblood case.

Persons Testifying (Ways & Means): PRO: Michael Shaw, Pierce County.

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