

SENATE BILL REPORT

SB 5046

As of February 5, 2019

Title: An act relating to extending county authority to collect reimbursements from the department when conducting panel competency evaluations.

Brief Description: Extending county authority to collect reimbursements from the department when conducting panel competency evaluations.

Sponsors: Senators O'Ban, Becker and Wagoner.

Brief History:

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 1/25/19.

Brief Summary of Bill

- Extends the expiration of the requirement for the Department of Social and Health Services to reimburse an eligible county for the cost of appointing a local expert to perform a competency evaluation, until June 30, 2024.

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

Staff: Kevin Black (786-7747)

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 the two adult state hospitals, Western State Hospital and Eastern State Hospital, and at 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

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are released to the community and for a smaller number of patients who are admitted to a state hospital, or other facility contracted by the Department of Social and Health Services (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 January 31, 2019, indicates an average time for completion of a competency evaluation in Washington of 12.7 days within the Western State Hospital catchment area and 14.7 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 42.8 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 county authority to appoint an evaluator and obtain reimbursement from DSHS was extended by the Legislature in 2015 until June 30, 2019.

Summary of Bill: The expiration of the requirement for DSHS to reimburse an eligible county for the cost of appointing an expert to perform a competency evaluation is extended for five years, from June 30, 2019, until June 30, 2024.

Appropriation: None.

Fiscal Note: Requested on January 14, 2019.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: This has been a successful program in Pierce County. It is something we should continue given the high demand for competency services and slowness of the evaluation process. We evaluate about 450 defendants a year through the

program. More counties should adopt this system—it is faster, and the local prosecutors and defense believe in it. There is a vested interest in making sure both sides are happy. There are a few things that should be worked out. The quarterly review process should be amended to an annual process that separates county cases from municipal court cases, and provides notice before funding would be cut off. It is difficult to maintain evaluators if the program does not receive consistent funding. We would prefer eliminating the sunset date, or at least scheduling it to occur during a budget year.

Persons Testifying: PRO: Senator Steve O'Ban, Prime Sponsor; Bryan Chushcoff, Judge, Pierce County Superior Court.

Persons Signed In To Testify But Not Testifying: No one.