

SENATE BILL REPORT

SB 5210

As Reported by Senate Committee On:
Health & Long Term Care, January 20, 2021
Behavioral Health Subcommittee to Health & Long Term Care, January 29, 2021

Title: An act relating to updates to competency restoration order requirements.

Brief Description: Concerning updates to competency restoration order requirements.

Sponsors: Senators Dhingra, Darneille, Kuderer, Nguyen and Wilson, C.; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Health & Long Term Care: 1/20/21 [w/oRec-BH].
Behavioral Health Subcommittee to Health & Long Term Care: 1/22/21, 1/29/21 [DPS].

Brief Summary of First Substitute Bill

- Allows a court to order a criminal defendant to receive outpatient competency restoration treatment without committing them to the custody of the Department of Social and Health Services.
- Requires a defendant to be willing to comply with urinalysis or breathalyzer monitoring, if needed, to be eligible for outpatient competency restoration.

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

Majority Report: That Substitute Senate Bill No. 5210 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Frockt, Nobles and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kevin Black (786-7747)

Background: Competency to Stand Trial. A criminal defendant may not be permitted to stand trial or waive any trial rights while they are incompetent to stand trial. A person is incompetent to stand trial if, due to a mental disorder, they lack the capacity to understand the nature of the proceedings against them or are unable to assist in their own defense.

Competency Evaluations and Competency Restoration. When the issue of competency is raised in a criminal case by any party or the court, the court must stay the proceedings for a determination of competency. The court may order a competency evaluation to be performed by an appointed expert witness or by a staff of competency evaluators which is provided to the court at no cost by the Department of Social and Health Services (DSHS). If the court finds, following the evaluation, the defendant is incompetent to stand trial, the court may not lift the stay, but may be able to order the defendant to undergo a period of competency restoration treatment. Competency restoration treatment is involuntary mental health treatment undertaken for the purpose of restoring legal competency and rendering the defendant amenable to trial. Depending on the classification of the criminal charge, the person may qualify for up to 0, 29, 315, or 360 days of competency restoration treatment, which the state provides at no cost to the court, generally at a state hospital or contracted inpatient treatment facility. A few defendants qualify for outpatient competency restoration. To be eligible for outpatient competency restoration, a defendant must:

- be charged in a county that deploys forensic navigators;
- be recommended by the forensic navigator with input from the parties;
- be ordered to receive outpatient competency restoration by the judge;
- be clinically appropriate;
- be willing to adhere to medications or receive prescribed intramuscular injection; and
- be willing to abstain from alcohol and unprescribed drugs.

Language in the outpatient competency restoration statute states that the court must commit the defendant to the custody of DSHS for competency restoration before deciding whether to order the defendant to receive inpatient or outpatient competency restoration treatment.

Civil Conversion. If the statutory time periods for competency restoration treatment are exhausted without the court finding that the defendant is restored to competency, or if the court ends the competency restoration process before then, the court must dismiss the charges against the defendant without prejudice. If the defendant was charged with a felony, the court is then required to commit the defendant to a state hospital for up to 72 hours, calculated from the time of state hospital admission, excluding Saturdays, Sunday, and holidays, for the purpose of filing a civil commitment petition under the Involuntary Treatment Act. If the court finds grounds for civil commitment are present, it may commit the person for up to 180 days of civil treatment, which is renewable if the person continues to meet civil commitment criteria. A person whose felony charges are dismissed based on incompetency to stand trial may receive civil commitment under the ground that they committed acts constituting a felony, and due to a mental disorder present a substantial

likelihood of repeating similar acts, in addition to the standard civil commitment grounds that a person either presents a likelihood of serious harm or is gravely disabled.

The Trueblood Lawsuit. In the case of *Trueblood v. DSHS*, filed in 2014 in federal district court, Washington State was found liable for imposing excessive wait times on in-custody defendants who were ordered to receive competency evaluation and competency restoration services by local courts. After finding liability in 2015, the court found the state was in contempt in 2017 for continued noncompliance. The state was assessed over \$83 million in fines before reaching a settlement agreement with the plaintiffs at the end of 2018. During the settlement period, which is ongoing, contempt fines continue to accrue, but are held in suspension. Outpatient competency restoration and the services of forensic navigators are services for allegedly incompetent criminal defendants which were instituted pursuant to the *Trueblood* settlement agreement. A recently released report showing data through June 30, 2020, indicates that the state performance remains above the court-ordered timeliness standards for all competency-related services.

Summary of Bill (First Substitute): A court may order a defendant to receive outpatient competency restoration, without committing the defendant to the custody of DSHS.

A defendant must be willing to comply with urinalysis or breathalyzer monitoring, if needed, to be eligible for outpatient competency restoration.

EFFECT OF CHANGES MADE BY BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Removes an increase in the time for civil commitment after dismissal of criminal charges from 72 to 120 hours.
- Adds a requirement that a defendant must be willing to comply with urinalysis or breathalyzer monitoring, if needed, to be eligible for outpatient competency restoration.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: I have long been a supporter of outpatient competency restoration. I have been very excited to see more options being provided in the community. Not all programs need to be done through the custody of DSHS. We are interested in clarifying that DSHS does not have custodial authority over

patients in outpatient programs. The 120-hour commitment period aligns with the change in initial detention times made for civil commitment cases last session. Our team is working hard to meet the needs of the forensic population.

OTHER: We are concerned about moving individuals back into the community without sufficient supports. Please require individuals to be provided with more tangible supports to ensure their success. Persons should not be held for up to five days for filing of a civil commitment petition. DSHS is failing these people. The waiting list for services is longer than it was when the *Trueblood* lawsuit was filed. These folks have already been diagnosed and examined, they are not in the same position as someone being investigated for the first time by a designated crisis responder. I find this unconscionable. Five days is not necessary when they have already waited for so long in jail.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Sean Murphy, Behavioral Health Administration, Department of Social and Health Services; Dr. Tom Kinlen, Behavioral Health Administration, Department of Social and Health Services.

OTHER: James McMahan, Washington Association of Sheriffs and Police Chiefs; Kari Reardon, Washington Defender Association, Washington Association of Criminal Defense Lawyers, Cowlitz County Office of Public Defense.

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