

FINAL BILL REPORT

2SSB 5664

PARTIAL VETO

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Synopsis as Enacted

Brief Description: Concerning forensic competency restoration programs.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Keiser and Nobles).

Senate Committee on Health & Long Term Care

Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care

Senate Committee on Ways & Means

House Committee on Civil Rights & Judiciary

House Committee on Appropriations

Background: Forensic Civil Commitment and Competency to Stand Trial. Forensic civil commitment is court-ordered involuntary evaluation or treatment for a mental health disorder imposed on a criminal defendant or in relation to criminal charges that have been dismissed based on incompetency to stand trial or criminal insanity. A defendant has a constitutional right to not be tried for a crime unless the defendant is competent to stand trial. Competent to stand trial means the defendant does not have a mental disorder that causes the defendant to be incapable of understanding the nature of the proceedings against them or unable to assist in their own defense.

Competency Evaluations and Competency Restoration Treatment. When the issue of competency to stand trial is raised by any party or the court, the court must stay the proceedings for a determination of competency. The court must appoint an expert or request a competency evaluation by an evaluator provided at no cost by the Department of Social and Health Services (DSHS). If the court finds following the evaluation that the defendant is incompetent to stand trial, the case must remain stayed and the court may order the defendant to undergo a period of competency restoration treatment.

Competency restoration treatment is involuntary mental health treatment for the purpose of restoring legal competency, rendering the defendant amenable to trial. A person may

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qualify for a period up to 0, 29, 315, or 360 days of competency restoration treatment depending on the nature of the charges against them—nonserious nonfelony, serious nonfelony, nonviolent felony, or violent felony. Competency restoration is provided at a state hospital or other DSHS facility unless the defendant qualifies for an outpatient competency restoration program (OCRCP).

To be eligible for an OCRCP, a defendant must:

- be charged in a county within a *Trueblood* settlement region that employs forensic navigators;
- be recommended for an OCRCP by a 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 to receive a prescribed intramuscular injection; and
- be willing to abstain from alcohol and unprescribed drugs.

The *Trueblood* Lawsuit. In the case of *Trueblood v. DSHS*, Washington State was found liable in 2015 for imposing excessive wait times for competency to stand trial services. The federal court ordered Washington to provide timely competency to stand trial services to in-custody defendants, and in 2017 found the state in contempt of court 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, with most fines held in suspension. The creation of OCRCPs and employment of forensic navigators were stipulated terms in the *Trueblood* settlement agreement and enshrined in law in 2019. The most recent court monitor report from December 2021 indicates that the state is meeting the court's 14-day maximum time limit on average for performance of a competency evaluation in jail, but remains out-of-compliance with the 14-day maximum time limit for transporting a defendant from jail to a competency restoration facility, averaging about 45 days waiting time per defendant, on a volume of about 113 competency restoration orders per month.

Summary: When outpatient competency restoration is no longer appropriate for a defendant who has been ordered to receive it, the director of the OCRCP must notify the Health Care Authority (HCA) of the need to terminate the program and intent to request placement of the defendant in an inpatient competency restoration program. The OCRCP must coordinate with HCA and DSHS to minimize the time between termination of the OCRCP and acceptance into an inpatient facility. DSHS must place the defendant in an inpatient facility within seven days of notice of intent to terminate the OCRCP. DSHS may authorize a peace officer to take the defendant into emergency custody for transport to a designated inpatient treatment facility. If medical clearance is required before admission, the peace officer must transport the defendant to a crisis stabilization unit, evaluation and treatment facility, emergency department, or triage facility for medical clearance once a bed is available at the designated inpatient treatment facility.

A competency evaluator must be given access to records held by the Developmental Disabilities Association relating to a defendant ordered to receive a competency evaluation who is identified as having a developmental disability.

The time period for inpatient competency restoration must be reduced by the time period spent in active treatment within an OCRP, excluding all time periods in which the defendant was absent from the program and all time from notice of termination of the OCRP through the defendant's admission to the facility. The length of the initial competency restoration period for a defendant referred for OCRP who is charged with a class C or nonviolent class B felony is increased from 45 days to 90 days, provided that the period for inpatient treatment if the OCRP is terminated may not exceed 45 days.

DSHS must provide written notice to the court when it will exceed the maximum time limits for a service related to competency to stand trial, identify the reasons for the delay, and provide a reasonable estimate of the time needed to complete the evaluation. Good cause for an extension must be presumed absent a written response from the court or a party received within seven days.

A defendant must agree to comply with urinalysis or breathalyzer monitoring if needed in order to be eligible for an OCRP. A 90-day cap on the time a nonfelony defendant may spend in a combination of outpatient and inpatient competency restoration programs is removed.

The time for a state hospital to file a civil commitment petition for a defendant detained after dismissal of felony charges based on incompetency to stand trial is increased from up to 72 hours to up to 120 hours, excluding weekends and holidays, unless the defendant has undergone inpatient competency restoration services.

A party to the criminal case may request a competency to stand trial status check with notice to all parties if a defendant remains in jail 21 days after a court order to transport the defendant to a DSHS facility for competency restoration treatment, to determine if the circumstances of the person have changed such that the court should order a new competency evaluation. Status updates may be provided at reasonable intervals.

Liability protection is created for peace officers and other public and private agency officials for actions or decisions taken related to the decision to detain a person for medical clearance or treatment under forensic competency statutes, provided their actions are taken in good faith and without gross negligence.

The need for additional time for the defendant to no longer show active signs and symptoms of impairment related to substance use so that an accurate evaluation may be completed, and medical unavailability of the defendant for competency services are recognized as acceptable reasons for exceeding the maximum time limit for completion of a competency evaluation.

Psychiatric advanced registered nurse practitioners are added to a definition of "professional persons," allowing them to provide competency evaluations, provide expert testimony in criminal insanity proceedings, and to make decisions on behalf of forensic mental health facilities.

Performance targets and maximum time limits for DSHS to perform timely services related to competency to stand trial are amended as follows:

- a performance target of seven days or fewer to extend an offer of admission to a defendant for inpatient competency services;
- a maximum time limit of seven days or fewer to complete the same service, measured from DSHS receipt of the order, or 14 days from the signing of the order, whichever is shorter;
- a performance target of 14 days or fewer to complete a competency evaluation in jail or extend an offer of admission to a defendant for a civil commitment evaluation; and
- a maximum time limit of 14 days to complete the same services, measured from DSHS receipt of the order, or 21 days from the signing of the order, whichever is shorter.

DSHS' responsibility for costs related to competency to stand trial services is limited to appropriated amounts. Responsibility for OCRP costs is assigned to HCA.

HCA is required to report annually to the Governor and Legislature starting November 1, 2022, describing how many defendants receive services from and are revoked from OCRPs, their length of stay, and the frequency of successful competency restorations.

Language changes clarify that a defendant is not committed to the custody of DSHS when the court orders the defendant to receive outpatient competency restoration treatment.

Nonsubstantive changes are made to competency to stand trial statutes to simplify their language and structure.

Votes on Final Passage:

Senate	49	0	
House	97	1	(House amended)
Senate	49	0	(Senate concurred)

Effective: June 9, 2022

Partial Veto Summary:

The emergency clause was vetoed. See the Governor's veto message for details.