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**Ways & Means Committee**

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**SSB 5114**

**Brief Description:** Streamlining competency evaluation and competency restoration procedures.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senator Hargrove).

**Brief Summary of Substitute Bill**

- Provides that one expert or professional person (rather than two) be appointed to evaluate the competency or insanity of a criminal defendant, unless the defendant is charged with aggravated murder.
- Requires the court to order that a competency or insanity evaluation take place in the community or in a jail or detention facility and permits a defendant to be evaluated at a state hospital facility upon a determination of the evaluator.
- Removes the requirement that a competency report include an opinion regarding future dangerousness, and provides that for a felony defendant, the competency report after the first 90-day restoration period must include an evidence-based assessment of the defendant's future dangerousness.
- Delays the effective date of some provisions of 2010 legislation that expanded the factors that may be considered for detaining and committing persons under the Involuntary Treatment Act.

**Hearing Date:** 5/20/11

**Staff:** Andy Toulon (786-7178).

**Background:**

In a criminal case, a court may require an evaluation of a defendant who may be incompetent to stand trial or who pleads not guilty by reason of insanity.

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*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.*

A person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. A person is incompetent if the person, as a result of a mental disease or defect, lacks the capacity to understand the nature of the criminal proceedings or to assist in his or her own defense.

#### Competency Evaluations.

When a criminal defendant pleads insanity or where the defendant's competency is in question, the court must appoint at least two qualified experts or professional persons to examine and report on the defendant's mental condition, one of whom must be approved by the prosecuting attorney. If the defendant has a developmental disability, one of the experts must be a developmental disabilities professional. The court may appoint only one expert to conduct the evaluation upon agreement of the parties.

The court may order the evaluation to take place at one of the state psychiatric hospitals for a period of time necessary to complete the examination, up to 15 days. If the defendant is detained in jail, the court may order the evaluation to take place in the jail with agreement of the parties. The evaluations conducted in jails are almost always done by staff from the state psychiatric hospitals.

The report of an examination of a defendant who may be incompetent or who pleads insanity must include: a diagnosis of the mental condition of the defendant; an opinion as to competency and an opinion as to sanity if insanity is claimed; an opinion as to whether the defendant should be evaluated under the Involuntary Treatment Act (ITA); and an opinion as to whether the defendant is a substantial danger to others or presents a substantial likelihood of committing criminal acts endangering public safety.

#### Competency Restoration.

If a person is found incompetent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency, or dismiss the charges without prejudice.

If a defendant charged with a felony is found incompetent, the court may order two 90-day periods of treatment to restore the defendant's competency, and under some circumstances may order that the defendant undergo competency restoration for a further period of up to six months. A defendant charged with a non-felony offense that is classified as serious is eligible for one period of inpatient competency restoration for no more than 14 days, plus any unused evaluation time. For a non-felony offense that is not a serious offense, the court may stay or dismiss proceedings and detain the defendant for a sufficient time to allow a designated mental health professional to evaluate the defendant for a civil commitment under the ITA.

If the defendant cannot be restored to competency within the designated time periods, the criminal case must be dismissed without prejudice. If the offense charged was a felony or serious non-felony, the defendant is transported to a state hospital for a civil commitment evaluation. The state may file a petition for a civil commitment for a period of 90 days for a misdemeanor charge, or 180 days for a felony charge, which may be renewed at successive civil commitment hearings.

#### State Hospital Forensic Beds.

There are currently a total of 365 funded forensic beds at the two adult state psychiatric hospitals, 270 at Western State Hospital (WSH) in Pierce County and 95 at Eastern State Hospital in Spokane County. These beds are used to provide competency evaluation, competency restoration, treatment for individuals found not guilty by reason of insanity, and at WSH, services to individuals who have been conditionally released from WSH. There are also times when individuals under civil commitment orders are served on the forensic units. During calendar year 2010, 192 (53 percent) of the forensic beds were used to provide treatment for individuals who were found not guilty by reason of insanity, leaving approximately 173 beds available statewide for the remaining services noted above.

#### 2010 Legislation on ITA Commitments.

In 2010 legislation (Second Substitute House Bill 3076) was enacted that included an expansion of the factors that designated mental health professionals (DMHPs) and courts may consider when making determinations for commitment under the ITA. Under these provisions, a DMHP must consider all reasonably available evidence from credible witnesses with significant contact and history of involvement with the person. In addition, DMHPs and courts may consider symptoms and behavior that standing alone would not justify commitment, but that show a marked deterioration in the person's condition and are closely associated with symptoms and behavior that led to past incidents of involuntary hospitalization or violent acts. These changes take effect on January 1, 2012.

#### **Summary of Bill:**

The process for conducting evaluations of criminal defendants who may be incompetent or who plead not guilty by reason of insanity is revised. The court will designate one qualified expert or professional person, who must be approved by the prosecutor, to conduct the evaluation. However, if the defendant may have a developmental disability, the examination must be performed by a developmental disabilities professional. If the defendant is charged with aggravated murder, the court may require the appointment of two evaluators.

The court must order that the evaluation take place in the community or in a jail or detention facility. If the evaluation is in the jail or detention facility, the evaluator may require the person to be transported to a hospital or secure facility for a period of commitment not to exceed 15 days if inpatient commitment is necessary to complete an accurate evaluation. The evaluator is required to promptly notify the court and all parties of a determination that inpatient commitment is necessary and the estimated time for completion of the evaluation.

The report of a competency evaluation does not need to include an opinion as to whether the defendant presents a substantial danger to others or a substantial likelihood of committing criminal acts jeopardizing public safety. For felony defendants, the evaluation report issued at the end of the first 90-day restoration period must include an assessment of the defendant's future dangerousness that is evidence-based regarding predictive validity.

The stated legislative intent of the act is to capture savings by reducing state hospital admissions without sacrificing the quality of competency evaluations or increasing the burden on counties or jails. The Department of Social and Health Services is directed to provide adequate staffing for competency evaluations so that the number of jail days consumed by defendants waiting for a competency evaluation is not increased by the act.

A delayed effective date is provided for the sections of Second Substitute House Bill 3076 (sections 2 and 3, chapter 280, Laws of 2010) that expanded the types of information that DMHPs and courts may consider when determining whether to detain or commit someone under the ITA. These provisions will take effect January 1, 2013, rather than January 1, 2012.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.