

# HOUSE BILL REPORT

## SHB 2195

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### As Passed Legislature

**Title:** An act relating to involuntary medication for maintaining the level of restoration in jail.

**Brief Description:** Concerning involuntary medication for maintaining the level of restoration in jail.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Morrell, Kochmar, Hurst, Green and Jinkins).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/17/14, 1/21/14 [DPS].

##### **Floor Activity:**

Passed House: 2/12/14, 97-0.

Passed Senate: 2/26/14, 49-0.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Identifies maintenance of restored competency in jail as a purpose for which a court may order a criminal defendant facing serious charges to be involuntarily medicated.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

**Staff:** Omeara Harrington (786-7136).

#### **Background:**

A person is incompetent to stand trial in a criminal case if, due to a mental disease or defect, he or she lacks the capacity to understand the nature of the proceedings or is unable to assist

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in his or her own defense. A court may require a competency evaluation of a defendant whenever the issue of competency is raised, and a person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

If a person is deemed incompetent to stand trial, the court must stay the criminal proceedings and, if the case involves a felony charge or a nonfelony charge that is a serious offense, order the defendant to undergo a period of competency restoration. Restoration treatment typically takes place at a state hospital and involves administration of psychiatric medication and other treatment. If the defendant undergoes restoration but cannot be restored to competency within the statutorily designated time period, the criminal case must be dismissed without prejudice. If the defendant's competency is restored, the criminal proceedings continue.

The United States Supreme Court has recognized that a person has a significant constitutionally protected liberty interest in avoiding the unwanted administration of psychiatric medication. However, in *Sell v. United States* the Court held that, under certain circumstances, a mentally ill defendant facing serious criminal charges may be involuntarily medicated in order to restore competency to stand trial. The *Sell* test requires a case-by-case inquiry that weighs the government's interest in prosecution against the individual's rights.

Washington has statutorily identified certain offenses that qualify as per se serious offenses for the purposes of ordering competency restoration, and, if the *Sell* test is satisfied, ordering involuntary medication during the restoration period. Included in the list of serious offenses are violent and sex offenses, crimes against persons, firearms and dangerous weapons offenses, harassment and domestic violence offenses, and class B felony drug offenses, among others. In addition, the statute outlines the factors the court must consider in deciding whether a non-listed offense qualifies as a serious offense in a particular case.

**Summary of Substitute Bill:**

Language is added to the competency statutes stating that a court order for involuntary medication may be entered for purposes of maintaining the level of a defendant's restored competency in jail after the statutory competency restoration period has terminated. Additional language is added to specify that the right of a restored defendant to refuse medication in the jail only applies in cases in which there is no court order authorizing involuntary medication in place.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This proposal would provide for the continuity of medical treatment. There is a revolving door situation in some competency cases in which a person is restored or partially restored to competency with court-ordered medication, but then the person is sent back to the

jail, refuses medication, and decompensates. This results in loss of progress, or the process starting over altogether. In some cases, the repeated restoration and decompensation has permanent effects. This bill is meant to keep people on track so that they can stay healthy and go to trial.

High intensity mental health housing in the jail costs \$250 per day. Inpatient psychiatric treatment at the state hospital is much higher, and hundreds of thousands of dollars have been spent on some of the cases with multiple rounds of restoration and decompensation. The health care staff in jails are capable of handling medication orders.

This bill only covers cases in which a *Sell* order has been obtained. The treating psychiatrist at the hospital has to appear in court and establish that the medications are appropriate and necessary. The intent of the *Sell* case is for the defendant to maintain competency while the charges are resolved, but that point is not reiterated consistently in the statutes.

(Opposed) None.

**Persons Testifying:** Representative Morrell, prime sponsor; Judy Snow, Pierce County Jail; and Al Rose, Pierce County Executive Office.

**Persons Signed In To Testify But Not Testifying:** None.