

SENATE BILL REPORT

SB 5210

As of January 21, 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.

Brief Summary of 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.

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

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

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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: A court may order a defendant to receive outpatient competency restoration, without committing the defendant to the custody of DSHS.

The period of time during which a person may be committed to a state hospital following dismissal of criminal charges, based on incompetency to stand trial, for the purpose of filing a civil commitment petition is increased from 72 hours to 120 hours.

Appropriation: None.

Fiscal Note: Requested on January 12, 2021.

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

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