

# HOUSE BILL REPORT

## SSB 6375

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### As Passed House:

March 2, 2000

**Title:** An act relating to clarifying timelines, information sharing, and evidentiary standards in mental health competency procedures.

**Brief Description:** Clarifying timelines, information sharing, and evidentiary standards in mental health competency procedures.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Long, Hargrove, Franklin, Stevens, Kohl-Welles, Winsley, Costa and McAuliffe).

### Brief History:

#### Committee Activity:

Judiciary: 2/24/00, 2/25/00 [DPA].

#### Floor Activity:

Passed House: 3/2/00, 97-0.

### Brief Summary of Substitute Bill (As Amended by House Committee)

- Specifies the calculation of the time periods in which a defendant can be held for evaluation under the civil commitment statutes.
- Establishes standards a court must use to determine whether a non-felony defendant has a history of violent acts for the purposes of ordering competency restoration treatment.
- Specifies that a civil commitment proceeding brought as a result of the competency process be brought in the county in which the criminal charge was dismissed.
- Authorizes criminal courts and civil courts dealing with mentally ill persons to share information for the purpose of preventing inconsistent evaluation and treatment orders.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Lambert, Republican Vice Chair.

**Staff:** Trudes Hutcheson (786-7384).

**Background:**

I. Criminal procedures for defendants who are criminally insane or incompetent.

A. Initial evaluation for competency.

Whenever a defendant has pleaded not guilty by reason of insanity, or the defendant's competency is in doubt, the court must appoint at least two qualified experts or professionals (one of whom must be approved by the prosecuting attorney) to examine the defendant and make a report regarding the defendant's mental condition. For purposes of the examination, the court may order the defendant to be committed to a hospital or mental health facility for up to 15 days.

For non-felony defendants, the evaluator must make a recommendation to the court whether the defendant should be examined by the county-designated mental health professional (CDMHP) for a civil commitment petition if the defendant is charged with a non-felony and the defendant: (a) is charged with, or has a history of, one or more violent acts; (b) is a threat to public safety; (c) has previously been acquitted by reason of insanity; or (d) has previously been found incompetent to stand trial. Whenever a defendant is evaluated, a copy of the order requiring evaluation must be sent to the CDMHP who handles civil commitments.

B. Treatment to restore competency.

If the defendant is incompetent to stand trial, the court must stay the proceedings. If the defendant is charged with a felony, the court must commit the defendant to the Department of Social and Health Services (DSHS) or some other facility for treatment until the defendant has regained competency, but not to exceed 90 days. This time period for felony defendants may be extended under certain circumstances.

If the defendant is incompetent, has been charged with a non-felony, and has: (1) a history of one or more violent acts or a pending charge of a violent act, or (2) been previously acquitted by reason of insanity or been previously found incompetent regarding an offense involving physical harm, then the court must order the DSHS to

place the defendant at a facility for treatment to restore competency. The defendant may be placed in a facility for treatment for up to 14 days, plus any unused time from the initial evaluation period, or the defendant may be placed on conditional release for up to 90 days, or a combination of both.

If a defendant is still incompetent after the time periods allowed for treatment, the court generally must dismiss the charges and refer the defendant to the civil court for possible civil commitment and treatment.

If, in non-felony cases, the proceedings were dismissed and the defendant was on conditional release at the time of the dismissal, the court must order the CDMHP to evaluate the defendant for civil commitment within 48 hours.

If the defendant was in custody at the time of the dismissal, the defendant must be detained and sent to a facility for up to 72 hours for the purposes of evaluation for civil commitment. The evaluator must determine whether to file a 90-day inpatient or outpatient petition for treatment. Immediately following completion of the evaluation, the evaluator must either file a petition for treatment or present a recommendation to the court. The court must review the recommendation by the next judicial day. If the evaluator recommends that the defendant be released and the court rejects the recommendation, the court may order that the defendant be detained at a facility for up to 72 hours. During that period, the prosecutor may file a petition for civil commitment for 90-day inpatient or outpatient treatment.

## II. Civil commitment of persons with mental disorders.

A person may be evaluated for treatment or civil commitment, either voluntarily or involuntarily, outside of the criminal court process.

When a CDMHP receives information claiming that a person, as a result of a mental disorder, presents a likelihood of serious harm or is gravely disabled, the CDMHP may file a petition for initial detention if the CDMHP is satisfied, after investigations and evaluation, that the allegations are true.

The court hearing the petition for initial detention may order the person to appear at a treatment facility for evaluation for not more than 72 hours. The evaluation and treatment may be performed on an outpatient or inpatient basis. The 72-hour period excludes Saturdays, Sundays, and holidays. A person detained for 72-hour evaluation and treatment may be detained for an additional 14 days of involuntary intensive treatment or for a 90-day less restrictive alternative if certain conditions are met.

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

Various changes are made to the statutes governing initial competency evaluations, competency restoration procedures, and civil competency proceedings.

A. Initial competency evaluations in criminal cases.

When a mental health professional is evaluating a defendant for competency to stand trial, the evaluator's report must also contain an opinion as to whether the defendant should be evaluated by a CDMHP for purposes of civil commitment.

Local correctional facilities are required to designate a professional person to receive the required report. The local facilities must notify the evaluator who the designated person is no later than the defendant's transfer to the evaluation and treatment facility or the beginning of an evaluation in the local correctional facility.

B. Competency restoration procedures.

Standards are established for a court to determine whether a non-felony defendant has a history of violent acts for the purposes of ordering competency restoration treatment. When determining whether a defendant has committed a violent act, the court must presume that: (1) a past conviction, guilty plea, or finding of not guilty by reason of insanity establishes the elements necessary for the crime charged; (2) the elements of a crime may not be sufficient in themselves to establish that the defendant committed a violent act; and (3) the facts underlying the elements, if not rebutted, are sufficient to establish that the defendant committed a violent act.

These presumptions may be rebutted. The court may consider information including, but not limited to the following material relating to the crime: (1) affidavits or declarations made under penalty of perjury; (2) criminal history record information; and (3) court records such as criminal complaints, certifications of probable cause to detain, dockets, and orders on judgment and sentencing.

A prior acquittal by reason of insanity or finding of incompetency under any equivalent out-of-state or federal statute also qualifies an incompetent defendant to receive competency restoration treatment.

C. Civil commitment proceedings after criminal charges are dismissed.

The 72-hour evaluation and treatment period that applies if the defendant is found incompetent and charges are dismissed is clarified to exclude Saturdays, Sundays, and holidays. The 72-hour period shall commence immediately on the day the order is entered.

The court must order an evaluation by the CDMHP for a person whose non-felony charges have been dismissed and whose initial report included an opinion that the

person is a substantial danger to others or presents a substantial likelihood of committing criminal acts jeopardizing public safety unless kept under control by the court or other persons.

Changes are made to the time frames in which an evaluator must submit a recommendation to the court and in which the court must review the recommendation. When a person is placed in an evaluation and treatment facility, the evaluator must file the recommendation to the court before the 72-hour evaluation period expires. The court must review the recommendation within 48 hours, excluding Saturdays, Sundays, and holidays.

A civil commitment petition filed on an incompetent person whose charges have been dismissed must be filed in the county where the criminal charge was dismissed. The criminal and civil courts may share information for the purpose of preventing inconsistent evaluation and treatment orders.

**Amended Bill Compared to Substitute Bill:** Under the substitute bill, the 72-hour evaluation period that applies to a defendant whose charges have been dismissed commenced on the next non-holiday weekday following the court order, as opposed to the day the order is entered.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 17, 2000.

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

**Testimony For:** This bill is a result of many professionals in the field working together. This will improve the way courts carry out the intent of the original mentally ill offenders bill dealing with criminal misdemeanor cases that was passed two years ago. This bill makes many clarifications in the law that will assist courts and other staff in implementing the laws.

**Testimony Against:** Lengthening the time frames will result in unfair detention of mentally ill people who are not dangerous. It makes the 72-hour rule a 96-hour rule. The evidence courts can consider when determining if a person has committed a violent act allows unreliable evidence into court. The nontechnical changes are overly broad.

**Testified:** (In support) Senator Long, prime sponsor; Michael Finkle, Seattle City Attorney's Office; Paul Trause, King County Prosecuting Attorney's Office; Lois Smith, Seattle Municipal Court; Richard Onizuka, Department of Social and Health

Services, Division of Mental Health; and Dave Stewart, Pierce County Regional Support Network.

(Opposed) Andrea Stephenson, The Empower Alliance; and Sherry Appleton, Washington Association of Criminal Defense Lawyers and Washington Defender Association.