

SENATE BILL REPORT

E2SHB 2060

As of March 27, 2015

Title: An act relating to timeliness of competency evaluation and restoration services.

Brief Description: Concerning competency evaluation and restoration services.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Jinkins and Ormsby).

Brief History: Passed House: 3/04/15, 83-15.

Committee Activity: Human Services, Mental Health & Housing: 3/23/15.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Kevin Black (786-7747)

Background: Forensic mental health services are evaluation and treatment services related to competence to stand trial (CST) and criminal insanity. Forensic mental health services are administered and provided by staff from Washington's three state hospitals: Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center. Administrative oversight and support for the state hospitals is provided by the Department of Social and Health Services (DSHS).

CST means that a criminal defendant has the present capacity to understand the nature of the charges against the defendant or to assist in their own defense. Whenever a question as to CST is raised, the criminal proceedings must be stayed until a mental health expert can evaluate the defendant and report on the defendant's mental state. If a defendant is found incompetent to stand trial (IST), the court may order the defendant to receive competency restoration treatment. When a defendant is ordered to receive competency restoration treatment, DSHS may place the defendant in an appropriate facility for treatment. DSHS currently provides competency restoration treatment exclusively at state hospitals.

In 2013 the Legislature passed Engrossed Substitute Senate Bill 5551, which provides that until June 30, 2016, DSHS must reimburse a county for the cost of employing a court-appointed mental health expert to complete a CST evaluation for a defendant in jail if DSHS has not met its seven-day performance target for the timeliness of in-jail CST evaluations for at least 50 percent of defendants in the county during the most recent quarter, as determined by DSHS' most recent quarterly report or confirmed by records maintained by DSHS. The

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expert must be appointed from a list of qualified persons assembled with the participation of prosecutors and the defense bar in the county. Reimbursements must be provided within appropriated funding, and must not be less than the state's cost for providing CST evaluations.

Summary of Bill: If during any quarter DSHS does not perform one-third as many CST evaluations as evaluations performed by court-appointed experts in a particular county, DSHS must reimburse that county for its cost to appoint experts to perform the CST evaluations. The expiration date for this section of law is extended two years until June 30, 2018.

The Legislature encourages DSHS to develop, on a phased-in basis, alternative locations and increased access to competency restoration treatment for individuals who do not require inpatient hospitalization. This may include community mental health providers or other local facilities that are willing and able to provide appropriate treatment under contract. During the 2015-17 fiscal biennium, DSHS may contract with one or more counties or cities to provide competency restoration services in a county or city jail, if the jail is willing and able to serve as a location for competency restoration and the Secretary of DSHS determines there is an emergent need for beds and documents the justification, including a plan to address the emergency. Competency restoration patients must be physically separated from other populations at the jail, must interact only with treatment staff and not jail staff except for incidental interaction for custodial services, food services, or similar services, and must be provided as much as possible with a therapeutic environment. Competency restoration services provided in a city or county jail must be performed by staff and professionals with similar skills and qualifications as state hospital staff and professionals.

DSHS must work with counties and the courts to develop a screening process to determine which individuals are safe to receive competency restoration treatment outside the state hospitals, and develop a plan to sufficiently increase capacity to meet the projected ten-year need for both forensic and civil mental health bed demand.

Time periods for competency restoration treatment for felony and misdemeanor defendants must include only time that the defendant is at the facility receiving treatment and do not include reasonable time for transport. A statutory seven-day time limit for placement in a treatment program or a court hearing under chapter 10.77 RCW is specified to apply only to persons who are criminally insane, and not persons ordered to receive competency restoration treatment.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates, including a section which is subject to an emergency clause. Please refer to the bill.

Staff Summary of Public Testimony: PRO: I take pride in the breadth of work on mental health policy this session, and the bipartisan, bicameral way in which it has been pursued. We prefer an amendment to clarify what the data the counties must share with DSHS. We will continue to work with the prosecutors and advocates concerning the provisions that would allow competency restoration treatment to be provided in a jail.

CON: We oppose competency restoration occurring in jails, although we support community-based competency restoration services in general and support appointing local experts to perform competency evaluations. Data shows that restoration is less effective outside inpatient facilities. Jail does not provide a therapeutic environment. Using jails for competency restoration would be challenged in court.

OTHER: Please don't normalize competency restoration treatment in jail; this is an inappropriate treatment setting for someone who has not been convicted. Appointing local experts to perform competency evaluations is a program that works. We support the House amendments to this legislation.

Persons Testifying: PRO: Representative Jenkins, prime sponsor; Jane Beyer, DSHS; Eleanor Owen, citizen.

CON: Chris Kaasa, American Civil Liberties Union of WA; Bob Cooper, WA Assn. of Criminal Defense Lawyers, WA Defender Assn.; David Lord, Disability Rights WA.

OTHER: Michael Shaw, Pierce County; Tom McBride, WA Assn. of Prosecuting Attorneys; Matt Zuvich, WA Federation of State Employees; Brian Enslow, WA State Assn. of Counties.

Persons Signed in to Testify But Not Testifying: No one.