
SUBSTITUTE SENATE BILL 5889

State of Washington 64th Legislature 2015 Regular Session

By Senate Human Services, Mental Health & Housing (originally sponsored by Senators O'Ban and Miloscia)

READ FIRST TIME 02/18/15.

1 AN ACT Relating to timeliness of competency evaluation and
2 restoration services; and amending RCW 10.77.068.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 10.77.068 and 2012 c 256 s 2 are each amended to
5 read as follows:

6 (1)(a) The legislature establishes the following performance
7 targets and maximum time limits for the timeliness of the completion
8 of accurate and reliable evaluations of competency to stand trial and
9 admissions for inpatient restoration services related to competency
10 to proceed or stand trial for adult criminal defendants. The
11 legislature recognizes that these targets may not be achievable in
12 all cases without compromise to the quality of competency evaluation
13 and restoration services, but intends for the department to manage,
14 allocate, and request appropriations for resources in order to meet
15 these targets whenever possible without sacrificing the accuracy and
16 quality of competency evaluations and restorations, and to otherwise
17 make sustainable improvements and track performance related to the
18 timeliness of competency services:

19 (i) For a state hospital to extend an offer of admission to a
20 defendant in pretrial custody for legally authorized (~~treatment or~~)
21 evaluation services related to competency, or to extend an offer of

1 admission for legally authorized services following dismissal of
2 charges based on ~~((incompetent))~~ incompetence to proceed or stand
3 trial((τ)):

4 (A) A performance target of seven days or less; and

5 (B) A maximum time limit of fourteen days;

6 (ii) For a state hospital to extend an offer of admission to a
7 defendant in pretrial custody for legally authorized inpatient
8 restoration treatment related to competency:

9 (A) A performance target of seven days or less; and

10 (B) A maximum time limit of fourteen days;

11 (iii) For completion of a competency evaluation in jail and
12 distribution of the evaluation report for a defendant in pretrial
13 custody((τ)):

14 (A) A performance target of seven days or less; and

15 (B) A maximum time limit of fourteen days, plus an additional
16 seven-day extension if needed for clinical reasons to complete the
17 evaluation at the determination of the department;

18 ~~((+iii))~~ (iv) For completion of a competency evaluation in the
19 community and distribution of the evaluation report for a defendant
20 who is released from custody and makes a reasonable effort to
21 cooperate with the evaluation, a performance target of twenty-one
22 days or less.

23 (b) The time periods measured in these performance targets and
24 maximum time limits shall run from the date on which the state
25 hospital receives the court referral and charging documents,
26 discovery, police reports, the names and addresses of the attorneys
27 for the defendant and state or county, the name of the judge ordering
28 the evaluation, information about the alleged crime, and criminal
29 history information related to the defendant. The ~~((targets))~~ maximum

30 time limits in (a)~~((+i) and (+ii))~~ of this subsection shall be phased
31 in over a ~~((six-month))~~ one-year period ~~((from May 1, 2012. The~~
32 target in (a)(iii) of this subsection shall be phased in over a
33 twelve-month period from May 1, 2012.

34 ~~((c))~~ The legislature recognizes the following nonexclusive list of
35 circumstances that may place achievement of targets for completion of
36 competency services described in (a) of this subsection out of the
37 department's reach in an individual case without aspersion to the
38 efforts of the department)) beginning July 1, 2015, in a manner that
39 results in measurable incremental progress toward meeting the time
40 limits over the course of the year.

1 (c) It shall be a defense to an allegation that the department
2 has exceeded the maximum time limits for completion of competency
3 services described in (a) of this subsection if the department can
4 demonstrate by a preponderance of the evidence that the reason for
5 exceeding the maximum time limits was outside of the department's
6 control including, but not limited to, the following circumstances:

7 (i) Despite a timely request, the department has not received
8 necessary medical clearance information regarding the current medical
9 status of a defendant in pretrial custody for the purposes of
10 admission to a state hospital;

11 (ii) The individual circumstances of the defendant make accurate
12 completion of an evaluation of competency to proceed or stand trial
13 dependent upon review of mental health, substance use disorder, or
14 medical history information which is in the custody of a third party
15 and cannot be immediately obtained by the department. Completion of a
16 competency evaluation shall not be postponed for procurement of
17 mental health, substance use disorder, or medical history information
18 which is merely supplementary to the competency determination;

19 (iii) Completion of the referral is frustrated by lack of
20 availability or participation by counsel, jail or court personnel,
21 interpreters, or the defendant;

22 (iv) The department does not have access to appropriate private
23 space to conduct a competency evaluation for a defendant in pretrial
24 custody;

25 (v) The defendant asserts legal rights that result in a delay in
26 the provision of competency services; or

27 ~~((iv))~~ (vi) An unusual spike in the receipt of evaluation
28 referrals or in the number of defendants requiring restoration
29 services has occurred, causing temporary delays until the unexpected
30 excess demand for competency services can be resolved.

31 (2) The department shall:

32 (a) Develop, document, and implement procedures to monitor the
33 clinical status of defendants admitted to a state hospital for
34 competency services that allow the state hospital to accomplish early
35 discharge for defendants for whom clinical objectives have been
36 achieved or may be achieved before expiration of the commitment
37 period;

38 (b) Investigate the extent to which patients admitted to a state
39 hospital under this chapter overstay time periods authorized by law

1 and take reasonable steps to limit the time of commitment to
2 authorized periods; and

3 (c) Establish written standards for the productivity of forensic
4 evaluators and utilize these standards to internally review the
5 performance of forensic evaluators.

6 (3) Following any quarter in which a state hospital has failed to
7 meet one or more of the performance targets or maximum time limits in
8 subsection (1) of this section after full implementation of the
9 performance target or maximum time limit, the department shall report
10 to the executive and the legislature the extent of this deviation and
11 describe any corrective action being taken to improve performance.
12 This report must be made publicly available. An average may be used
13 to determine timeliness under this subsection.

14 (4) Beginning December 1, 2013, the department shall report
15 annually to the legislature and the executive on the timeliness of
16 services related to competency to proceed or stand trial and the
17 timeliness with which court referrals accompanied by charging
18 documents, discovery, and criminal history information are provided
19 to the department relative to the signature date of the court order.
20 The report must be in a form that is accessible to the public and
21 that breaks down performance by county.

22 (5) This section does not create any new entitlement or cause of
23 action related to the timeliness of competency evaluations or
24 admission for inpatient restoration services related to competency to
25 proceed or stand trial, nor can it form the basis for contempt
26 sanctions under chapter 7.21 RCW or a motion to dismiss criminal
27 charges.

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