

# SENATE BILL REPORT

## ESSB 5551

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As Amended by House, April 16, 2013

**Title:** An act relating to competency to stand trial evaluations.

**Brief Description:** Concerning competency to stand trial evaluations.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Conway, Carrell and Shin).

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/18/13, 2/20/13 [DP-WM, w/oRec].

Ways & Means: 2/27/13, 3/01/13 [DPS].

Passed Senate: 3/13/13, 48-1.

Passed House: 4/16/13, 96-0.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Carrell, Chair; Pearson, Vice Chair; Darneille, Ranking Member; Hargrove and Harper.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Padden.

**Staff:** Kevin Black (786-7747)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5551 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Bailey, Becker, Braun, Conway, Dammeier, Fraser, Hasegawa, Hatfield, Hewitt, Keiser, Kohl-Welles, Murray, Padden, Parlette, Ranker, Rivers, Schoesler and Tom.

**Staff:** Megan Atkinson (786-7446)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** A criminal defendant is incompetent to stand trial when, as a result of a mental disease or defect, the defendant does not have the capacity to understand the proceeding against the defendant or sufficient ability to assist in the defense. Whenever there is reason to doubt a defendant's competency, the court must either appoint or request the state hospital to designate a qualified expert, who must be approved by the prosecuting attorney, to evaluate the mental condition of the defendant. The court may direct for the evaluation to be witnessed by an expert retained by or appointed for the defense, who must be allowed to submit an independent report. Regulations adopted by the Department of Social and Health Services (DSHS) limit the reimbursement of a defense expert in this situation to \$800.

In 2012, the Legislature passed SSB 6492, which established performance targets for the state hospitals related to the timely completion of competency evaluations. Performance targets of seven days for completion of an evaluation for defendants in jail and seven days for admission to the state hospital for defendants ordered to receive an inpatient competency evaluation phased in during November 2012. A 21-day performance target for completion of evaluation for defendants in the community phases in during May 2013. Other changes were made for the purpose of speeding up the completion of competency evaluations.

**Summary of Engrossed Substitute Bill:** DSHS must reimburse a county for the cost of appointing an expert to complete a competency evaluation for a defendant in jail if DSHS has not met its seven-day performance target for the timeliness of competency evaluations in jail for at least 50 percent of defendants in the county during the most recent quarter, as determined by DSHS's most recent quarterly evaluation report or confirmed by records maintained by DSHS. The expert must be appointed from a list of qualified persons assembled with the participation of prosecutors and the defense bar in the county.

The expert must be compensated in an amount that will encourage in-depth evaluation reports. Reimbursement must be provided in an amount determined by DSHS to be fair and reasonable within funding provided for this specific purpose. Reimbursement may not be less than DSHS's cost for state evaluations, with the county paying any excess costs.

Within current resources, the Office of the State Human Resources Director must gather market salary data related to psychologists and psychiatrists employed by DSHS and the Department of Corrections and report to the Governor and relevant committees of the Legislature by June 30, 2013.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony (Human Services & Corrections):** PRO: The waiting time for defendants to receive competency evaluations is a major problem for Pierce County, causing demands on limited jail resources and jail space. On any given day there are 80-90 jail inmates prescribed medication for mental health. The state has fallen behind in

providing competency evaluations, creating a backlog. People spend longer in jail than they should. The jail is not a mental health facility. People decompensate in jail while waiting for evaluations. Persons in jail for more than 30 days can lose their housing, social security income, and can go off medication. This bill will help DSHS meet its performance targets and speed up resolution of criminal matters. Good public policy keeps the community safe, upholds rights and individual dignity, and is cost effective. We want to partner with DSHS to unclog the system. Conditions in jail for persons with mental illness are difficult. The overriding cost is paid by persons with mental illness and traumatic brain injury who sit in jail waiting for these evaluations. This bill only applies when DSHS is not caught up. There are plenty of qualified psychologists in the community to do these evaluations. The defense has the right to an independent evaluation. Some defendants charged with low-level crimes spend more time in jail waiting for competency evaluations than they would if convicted of the crime. Smaller jails have difficulty segregating and managing persons with mental illness, who spend two to three times longer in jail than they should. We recommend changes to the bill to ensure adequate compensation. This is a simple mechanism to make sure timelines are met.

CON: Do not strike language stating performance targets will not always be attainable. The problem is the devastation of our mental health system. There are not enough evaluators to do the work. Studying this issue in a taskforce is the right approach. We do not support contracting out state work in response to a problem that is not of the workers' making.

OTHER: We share the concern raised by the bill and will continue the discussions we have had with Pierce County. DSHS is making major efforts to recruit forensic evaluators; we have hired 12 new evaluators in the past year. We have implemented productivity standards and the productivity of evaluators is increasing. DSHS receives 228 evaluation referrals from courts per month. The bill is unclear on several points. It should not require the appointment of outside evaluators. The key issues here are fiscal.

**Persons Testifying (Human Services & Corrections):** PRO: Senator Conway, prime sponsor; Pat McCarthy, Pierce County Executive; Paul Pastor, Pierce County Sheriff; David Lord, Disability Rights WA; Al Rose, Pierce County Executive Director of Justice Services; Steve Penner, Pierce County Prosecutor's Office; John Snaza, Thurston County Sheriff; Seth Dawson, National Alliance on Mental Illness (NAMI), NAMI WA; Brian Enslow, WA Assn. of Counties.

CON: Matt Zuvich, WA Federation of State Employees.

OTHER: Jane Beyer, DSHS.

**Staff Summary of Public Testimony on Substitute (Ways & Means):** PRO: The issue of this bill is the backlog of competency evaluations and the impact that backlog has on jails, community providers, and the mentally ill. Holding these folks in the jails is not good for anyone, it drives up costs and the individuals decompensate in the jails. The backlog is a fiscal issue, Pierce County is willing to have some skin in the game. There is also a liability issue for the state and counties by having vulnerable individuals and individuals with developmental disabilities linger in jails.

OTHER: There are concerns that this is a fiscal issue and if more resources were available then there would not be a backlog of evaluations. There is also a capacity problem at Western State Hospital that causes problems with the system. DSHS understands Pierce County's concerns and is committed to working with the county to resolve this issue. The concern of DSHS is the open-ended potential for costs.

**Persons Testifying (Ways & Means):** PRO: Al Rose, Pierce County; Judy Snow, Pierce County Corrections; David Lord, Disability Rights WA; Douglas White, citizen.

OTHER: Jane Beyer, DSHS; Matt Zuvich, WA Federation of State Employees.

**House Amendment(s):** The county must provide copies of evaluations completed under this act to the applicable state hospital when defendants are admitted for services, and maintain data on the timeliness of evaluations completed. Funding for reimbursements is made subject to specific appropriation. An emergency clause is added concerning section 2.