S-1433.2

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**SENATE BILL 5889**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators O'Ban and Miloscia

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

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

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

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

(i) For a state hospital to extend an offer of admission to a defendant in pretrial custody for legally authorized restoration treatment or evaluation services related to competency, or to extend an offer of admission for legally authorized services following dismissal of charges based on ((~~incompetent~~))incompetence to proceed or stand trial((~~,~~)):

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

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

(ii) For completion of a competency evaluation in jail and distribution of the evaluation report for a defendant in pretrial custody((~~,~~)):

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

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

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

(b) The time periods measured in these performance targets and maximum time limits shall run from the date on which the state hospital receives the court referral and charging documents, discovery, mental health and medical records, police reports, the names and addresses of the attorneys for the defendant and state or county, the name of the judge ordering the evaluation, information about the alleged crime, a summary of the reasons for the evaluation request, and criminal history information related to the defendant. The ((~~targets~~))maximum time limits in (a)(i) and (ii) of this subsection shall be phased in over a ((~~six-month~~))one-year period ((~~from May 1, 2012. The target in (a)(iii) of this subsection shall be phased in over a twelve-month period from May 1, 2012.~~

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

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

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

(ii) The individual circumstances of the defendant make accurate completion of an evaluation of competency to proceed or stand trial dependent upon review of medical history information which is in the custody of a third party and cannot be immediately obtained by the department. Completion of a competency evaluation shall not be postponed for procurement of medical history information which is merely supplementary to the competency determination;

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

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

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

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

(2) The department shall:

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

(b) Investigate the extent to which patients admitted to a state hospital under this chapter overstay time periods authorized by law and take reasonable steps to limit the time of commitment to authorized periods; and

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

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

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

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

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