

# HOUSE BILL REPORT

## HB 2301

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

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

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

**Sponsors:** Representatives Kilduff, Frame, Leavitt and Irwin.

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 1/15/20, 1/17/20 [DPS].

**Brief Summary of Substitute Bill**

- Reinstates the requirement for the Department of Social and Health Services to reimburse a county for the costs of performing competency evaluations.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Kilduff, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Graham, Hansen, Kirby, Klippert, Orwall, Peterson, Rude, Valdez, Walen and Ybarra.

**Staff:** Ingrid Lewis (786-7289).

**Background:**

Competency Evaluations.

A criminal defendant is incompetent to stand trial if, due to a mental disease or defect, he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in his or her own defense. When a defendant's competency is in question, the court must either appoint, or ask the Department of Social and Health Services (DSHS) to designate a qualified expert to evaluate and report on the defendant's mental condition.

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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.*

Competency evaluations may occur in a variety of locations, but generally occur in a jail or detention facility, the community, or one of the state hospitals. A defendant who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

In *Trueblood v the Department of Social and Health Services*, 822 F.3d 1037 (2015), a federal district court found that the State of Washington was violating the constitutional rights of in-jail defendants awaiting competency evaluation and restoration services. As a result, the DSHS was ordered to provide in-jail competency evaluations within 14 days of a court order and inpatient competency evaluation and restoration services within seven days of a court order.

#### County Reimbursement for Competency Evaluations.

Legislation enacted in 2013 required the DSHS to reimburse a county for the cost of appointing a qualified expert to conduct a competency evaluation for a defendant in jail if:

- the DSHS had not met performance targets for competency evaluations for in-custody defendants in 50 percent of the cases submitted by the county during the most recent quarter; or
- the DSHS in the most recent quarter did not perform at least one-third of the number of jail-based competency evaluations for in-custody defendants as were performed by qualified experts appointed by the court.

Qualified experts were appointed from a list of qualified persons assembled with the participation of prosecutors and the defense bar in the county. The county was required to provide a copy of the completed report to the applicable state hospital if the defendant was referred for admission.

The DSHS was required to reimburse the county for the costs of the competency evaluator in an amount that was at least equivalent to the amount for evaluations conducted by the DSHS.

This reimbursement requirement expired June 30, 2019.

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#### **Summary of Substitute Bill:**

The reimbursement requirement is reinstated. For the purposes of calculation, county is defined as the political entity of the county. Qualified experts must be appointed from a list of qualified persons assembled with the participation of the Department of Social and Health Services (DSHS), prosecutors, and the defense bar in the county. Copies of the report must be provided to the DSHS, instead of the applicable state hospital, if the defendant is referred for admission. The DSHS is required to notify counties of eligibility two weeks after the end of the current quarter to assist with county decisions regarding assignments to qualified experts or professional persons. A county remains eligible for reimbursement for any evaluations assigned to a qualified expert or professional person prior to a notification. The DSHS is required to provide notice to a county using a mutually agreed upon delivery method.

The reimbursement requirement expires June 30, 2023.

**Substitute Bill Compared to Original Bill:**

The substitute bill allows the Department of Social and Health Services (DSHS) to participate in the assembly of the list of eligible qualified experts and professional persons and makes changes to account for additional facilities and programs available to the DSHS for admission.

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**Appropriation:** None.

**Fiscal Note:** Requested on January 8, 2020.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This bill passed out of committee and off the House floor in substantially identical form last year. The bill restores the mechanism that allows for reimbursement to the county for doing competency evaluations. Both the behavioral health and criminal justice systems are at maximum capacity. There is an increasing number of people with acute and chronic mental health issues waiting for competency evaluation and restoration. Many worsen while they wait.

The proposal began as a local Pierce County initiative by using local panel evaluators agreed upon by prosecutors and the defense bar. The county made sure that the reports maintained the same quality and standards as the department. The initiative had the support of the department and spread to other counties, including Spokane County.

There have been many changes in the approach toward behavioral health services in recent years. There has been improvement in the evaluation times and in hiring the evaluator workforce. Notwithstanding those efforts, there are currently over 30 people in the Pierce County jail waiting to be restored at Western State Hospital or one of the other restoration sites. Using local evaluators may be more economic for the state.

This legislation is about making sure that both the behavioral health and criminal justice systems are flowing more efficiently and that the rights of defendants are honored. When the system does not run efficiently, a person can end up languishing in jail longer than the potential sentence for the offense. This tool is available to all counties in the state.

(Opposed) None.

(Other) The Washington Federation of State Employees (WFSE) has been a part of this concept since its inception. This is outsourcing the work of state hospital evaluators. The WFSE understands the need and the conditions which make this proposal necessary. The

Governor and the Legislature have addressed the wage gap for competency evaluators, and the Governor's budget does contain provisions for an official recruitment team and more new employee orientation training, but the solution to this problem is to attract and retain enough competency evaluators to do the job.

The cost of outsourcing evaluations is double the cost of doing it through the state.

Also of concern is the quality of evaluations done outside of the state system. A qualified state evaluator must have a PhD in psychology, with extensive forensic experience. To be a qualified evaluator through the community, only a master's in psychology is required. Competency evaluations have significant personal liberty and public safety ramifications. It is important that the individuals performing the evaluations are sufficiently trained.

**Persons Testifying:** (In support) Representative Kilduff, prime sponsor; Derek Young, Pierce County Council; and Frank Cuthbertson, Pierce County Superior Court.

(Other) Matt Zuvich and Mike Yastremski, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** None.