

HOUSE BILL REPORT

SSB 5210

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to updates to competency restoration order requirements.

Brief Description: Concerning updates to competency restoration order requirements.

Sponsors: Senate Committee on Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Dhingra, Darneille, Kuderer, Nguyen and Wilson, C.; by request of Department of Social and Health Services).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/24/21, 3/26/21 [DP].

Brief Summary of Substitute Bill

- Adds compliance with urinalysis or breathalyzer monitoring, if needed, for a defendant to qualify for outpatient competency restoration.
- Allows a court to order a defendant to receive outpatient competency restoration without committing the defendant to the custody of the Department of Social and Health Services.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 17 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez, Walen and Ybarra.

Staff: Ingrid Lewis (786-7289).

Background:

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

Competency to Stand Trial.

A person is incompetent to stand trial in a criminal case if he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in their own defense. A court may require a competency evaluation of a defendant whenever the issue of competency is raised. A person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

If a person is found incompetent to stand trial, the court must stay the proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency or dismiss the charges without prejudice.

Competency Restoration.

A defendant determined to be incompetent to stand trial who is charged with a serious nonfelony or felony crime may be committed for competency restoration treatment. Competency restoration treatment generally occurs on an inpatient basis at either Western State Hospital or Eastern State Hospital, or two contracted inpatient competency-restoration providers. Outpatient competency restoration may be available to a defendant if he or she qualifies. A court ordering competency restoration is required to commit the defendant to the custody of the Department of Social and Health Services (DSHS) for competency restoration before deciding whether to order the defendant to receive inpatient or outpatient competency restoration treatment.

To be eligible for outpatient competency restoration, a defendant must be:

- charged in a county that deploys forensic navigators;
- recommended by the forensic navigator with input from the parties;
- ordered to receive outpatient competency restoration by the judge;
- clinically appropriate;
- willing to adhere to medications or receive prescribed intramuscular injection; and
- willing to abstain from alcohol and unprescribed drugs.

Summary of Substitute Bill:

Language requiring a court to commit the defendant to a DSHS or a DSHS-approved facility or provider for outpatient restoration is amended to allow a court to order a defendant to receive outpatient competency restoration without committing the defendant to the custody of the DSHS.

A defendant must be willing to comply with urinalysis or breathalyzer monitoring, if needed, to be eligible for outpatient competency restoration.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill eliminates the requirement that an individual be placed in DSHS custody for outpatient competency restoration. Many of these programs are not DSHS programs and are done through community treatment providers.

The bill also provides that the individual has to comply with urinalysis or breath analysis monitoring if needed. Courts can already impose this requirement for conditional releases. It is important to know what is being ingested and understand how any potential substance is interacting with prescribed medications.

(Opposed) None.

(Other) The exclusion of breath analysis and urinalysis requirements in the *Trueblood* settlement was a thoroughly negotiated topic and included input from legal professionals, legislators, class members, clinicians, and designers of the program. These requirements are very expensive and promote a compliance and probationary relationship instead of a collaborative clinical relationship based on trust.

The DSHS would like to clarify that individuals in the outpatient programs are not in the custody of the DSHS. The DSHS only interacts with those who need in-patient treatment.

Persons Testifying: (In support) Senator Dhingra, prime sponsor; and Tom Kinlen, Department of Social and Health Services.

(Other) Darya Farivar, Disability Rights Washington; and Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.