HOUSE BILL REPORT
E2SSB 5440

As Passed House - Amended:
April 11, 2023

Title: An act relating to providing timely competency evaluations and restoration services to persons suffering from behavioral health disorders within the framework of the forensic mental health care system consistent with the requirements agreed to in the Trueblood settlement agreement.

Brief Description: Providing timely competency evaluations and restoration services to persons suffering from behavioral health disorders.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Nguyen, Saldaña, Valdez, Van De Wege and Wilson, C.; by request of Office of the Governor).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/14/23, 3/28/23 [DPA];
Appropriations: 4/1/23, 4/4/23 [DPA(APP w/o CRJ)].

Floor Activity:

Passed House: 4/11/23, 61-34.

**Brief Summary of Engrossed Second Substitute Bill
(As Amended by House)**

- Makes a number of changes to provisions governing competency evaluation and competency restoration procedures and requirements.
- Expands the duties of forensic navigators, and requires appointment of a forensic navigator for certain defendants charged with a qualifying class C felony or a nonfelony.
- Requires jails to allow clinical intervention specialists access to persons referred for competency evaluation or restoration services, and specifies the duties of clinical intervention specialists.

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.

- Prohibits jails or juvenile detention facilities from discontinuing or substituting a person's medications for a serious mental health disorder if the person is medically stable on the drug, with limited exceptions.
- Establishes requirements relating to persons who have been found incompetent to stand trial based on an intellectual or developmental disability, dementia, or traumatic brain injury.
- Requires the Health Care Authority to take steps to increase compensation of staff in outpatient competency restoration programs, subject to funding.
- Requires the Department of Social and Health Services to engage in certain data collection and to identify locations that may be commissioned or renovated for use in treating persons committed for competency evaluation or restoration or civil conversion, or following acquittal by reason of insanity.
- Establishes two pilot projects, one by the University of Washington addressing short-term stabilization and transition support for individuals found incompetent to stand trial due to an intellectual or developmental disability, and one by the Health Care Authority to establish behavioral health crisis systems regional coordinator positions in the Pierce, Southwest, and Spokane behavioral health administrative services organization regions.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Hansen, Chair; Farivar, Vice Chair; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Staff: Edie Adams (786-7180).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Civil Rights & Judiciary. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Ryu, Schmick, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Chandler and Dye.

Minority Report: Without recommendation. Signed by 8 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Connors, Couture, Rude, Sandlin and Steele.

Staff: Andrew Toulon (786-7178).

Background:

Competency to Stand Trial.
A person 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. A person who is incompetent to stand trial may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

Competency Evaluation and Restoration.
When a defendant's competency to stand trial 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. If a defendant is found incompetent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency, or dismiss the charges without prejudice. A court may order a period of competency restoration treatment for a defendant who is charged with a felony or a serious nonfelony offense, but not for a defendant charged with a nonfelony that is not a serious offense.

Felony Offenses. If a defendant charged with a felony is found incompetent to stand trial, the court must order a period of competency restoration treatment not to exceed 90 days, except if the highest charge is a class C felony or a nonviolent class B felony, the maximum time for the first restoration period is 45 days for inpatient competency restoration or 90 days for outpatient competency restoration. A second period of restoration treatment for up to 90 days may be ordered if necessary and reasonably likely to restore competency. In limited circumstances, the court may order a third period of restoration treatment for up to six months. The court must commit the person for inpatient competency restoration treatment at a state hospital or other DSHS competency restoration facility, or the court may order outpatient competency restoration treatment based on a recommendation from a forensic navigator and input from the parties.

Nonfelony Offenses. Where a defendant charged with a nonfelony offense is found incompetent to stand trial, the court must dismiss the charges without prejudice unless the prosecutor objects and provides notice of a motion for an order of competency restoration, which must be scheduled for a hearing within seven days. A court may order competency restoration if the court finds there is a compelling state interest in ordering nonfelony restoration. The court may order inpatient competency restoration for a period not to

exceed 29 days, or based on a recommendation from the forensic navigator and input of the parties, the court may order outpatient competency restoration for up to 90 days.

Outpatient Competency Restoration. A court may commit a person to outpatient competency restoration if there is an appropriate program available and the defendant is clinically appropriate for outpatient competency restoration. The defendant must be willing to adhere to medications or receive intramuscular medication, abstain from alcohol and prescribed drugs, and comply with urinalysis or breathalyzer monitoring. The DSHS must place the person into approved housing affiliated with a contracted outpatient competency restoration program (OCRP). The OCRP must monitor the defendant and report any noncompliance or significant changes to the DSHS or forensic navigator.

Dismissal of Charges. If a defendant is found incompetent to stand trial, charges are dismissed without prejudice, and the person must be detained for evaluation under the Involuntary Treatment Act (ITA) for specified time periods depending on whether the person engaged in inpatient competency restoration services. Where a court dismisses nonfelony charges and the person was on conditional release at the time of dismissal, the court will refer the defendant for evaluation by a designated crisis responder.

Forensic Navigators.
A forensic navigator is an impartial person employed by the DSHS and appointed as an officer of the court to assist individuals referred for competency evaluation. A forensic navigator assists parties in understanding options available to the person that may allow diversion from the forensic system or for community outpatient competency restoration, and to facilitate the person's transition to those options, including by coordinating access to mental health services and housing, and assisting the person with obtaining prescribed medication and attending appointments and classes.

Trueblood v. the Department of Social and Health Services Lawsuit and Timelines for Competency Services.
In *Trueblood v. the Department of Social and Health Services* (2015) (*Trueblood)*, a federal district court found that the State of Washington was violating the constitutional rights of in-jail defendants for excess wait times for 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. In 2017 the state was found in contempt for continued noncompliance, and in 2018 the state reached a contempt settlement agreement. The settlement requires the state to take numerous actions to meet the timeframes set forth by the court. The creation of forensic navigators and OCRPs are components of the settlement agreement enacted into law in 2019. The state remains out of compliance with the timeframes for providing competency services established in *Trueblood*.

Summary of Amended Bill:

Competency Evaluation and Restoration.

In a criminal proceeding where there is a doubt as to the defendant's competency to stand trial, the court may order a competency evaluation only if the court first reviews the allegations of incompetency and makes a determination that there are sufficient facts to form a genuine doubt as to competency based on information provided by counsel, judicial colloquy, or direct observation of the defendant. Nothing in this process requires waiver of attorney-client privilege. Defense counsel may file a declaration stating a belief that competency evaluation is necessary, and stating the basis on which the defendant is believed to be incompetent, without further detail required.

If an evaluation is ordered for a defendant charged with a serious traffic offense or felony version of a serious traffic offense, the prosecutor may move to modify the defendant's conditions of release to prohibit the defendant from driving during the pendency of the competency evaluation period. If the charges are stayed based on the defendant's incompetency, the court may enter an order for the Department of Licensing (DOL) to revoke the defendant's driver's license for one year. When the court finds that competency has been restored, the court must enter an order for the DOL to reinstate the defendant's driver's license. Upon motion of the defendant, the court may order reinstatement of the defendant's driver's license before the end of one year for good cause. These provisions take effect October 1, 2023.

An evaluator must have access to records of the Aging and Long-Term Support Administration (ALTSA) if the defendant may have dementia or another neurocognitive disorder. If an individual is found incompetent due to an intellectual or developmental disability or dementia, the evaluator must notify the DSHS, which must refer the individual to the Developmental Disabilities Administration (DDA) or ALTSA for review of eligibility for services, and information about available services must be provided to the forensic navigator.

If an expert or professional person is unable to complete a competency evaluation after two scheduling attempts, the DSHS must submit a report to the court and parties and include a date and time for another evaluation at least four weeks later. The court must provide the defendant with notice of the date and time of the evaluation, and if the defendant fails to appear, the court must issue a warrant for failure to appear and recall the order for competency evaluation.

Competency restoration procedures for a defendant charged with a "qualifying class C felony" are revised. "Qualifying class C felony" means any class C felony except: Assault in the third degree where bodily harm occurred; felony Physical Control of a Vehicle; felony Hit and Run resulting in injury; Hate Crime Offense; any class C felony offense with a domestic violence designation; any class C felony sex offense; and any class C felony offense with a sexual motivation allegation.

When a person charged with a qualifying class C felony is found incompetent, the court

must first consider all available and appropriate alternatives to inpatient competency restoration, which include diversion to a community-based program, commitment under the ITA, or outpatient competency restoration. If such a placement does not exist, is not appropriate, or is not available in a timely manner, the court shall order inpatient competency restoration. If the defendant is subject to an order under the ITA or proceedings under the ITA have been initiated, there is a rebuttable presumption that there is no compelling state interest in ordering competency restoration treatment. The maximum time allowed for competency restoration for a defendant charged with a qualifying class C felony is 45 days if the defendant is referred for inpatient competency restoration, or 90 days if the defendant is referred for outpatient competency restoration.

For any defendant with a felony charge admitted for competency restoration with a court order for involuntary medication in place, if the defendant is found incompetent to stand trial following that period of restoration, charges must be dismissed without prejudice and the defendant must be committed to the DSHS for evaluation under the ITA.

If a defendant charged with a nonfelony that is a serious offense is found incompetent to stand trial, and the defendant is subject to an order under the ITA or proceedings under the ITA have been initiated, there is a rebuttable presumption that the state's compelling interest in competency restoration has been satisfied. If a compelling state interest in pursuing competency restoration is found, the court must order outpatient competency restoration consistent with the forensic navigator's recommendations unless the court finds outpatient competency restoration inappropriate. Criminal Trespass in the first and second degree are excluded from the list of nonfelony serious offenses for the purpose of eligibility for competency restoration and entry of involuntary medication orders.

When criminal charges are dismissed and the defendant committed to the DSHS for evaluation for potential civil commitment, if the defendant is already in a facility operated or contracted by the DSHS, the time periods for conducting the evaluation begin upon receipt by the DSHS of the court order dismissing the charges. If a court orders a commitment for competency restoration or civil conversion, the commitment is to the DSHS for placement in a facility operated by or contracted by the DSHS, rather than to a state hospital.

Outpatient competency restoration programs must include access to a prescriber.

Forensic Navigators.
The duties of a forensic navigator are expanded to include: assessing the individual for appropriateness for assisted outpatient treatment (AOT); and providing regular updates to the court and parties on the status of the individual's participation in diversion services, and responding to inquiries of the parties about treatment status. When an individual is ordered to receive community outpatient restoration, the forensic navigator must assess the individual for the appropriateness of AOT, and coordinate the initiation of an AOT order if appropriate as part of a diversion program plan. If the individual is an American Indian or

Alaska Native who receives medical, behavioral health, or other supportive services from a Washington tribe, the forensic navigator must notify and coordinate with the tribe and Indian health care providers.

In counties with a forensic navigator program, the court must appoint a forensic navigator for any defendant charged with a qualifying class C felony or a nonfelony who has had two or more competency evaluations in the preceding 24 months on separate charges or cause numbers. The forensic navigator must meet, interview, and observe the defendant and determine the defendant's willingness to engage with diversion services. Where diversion is recommended, the forensic navigator must provide a diversion program plan to the parties, which may include a referral for AOT. If the parties agree on the diversion program, the prosecutor must request dismissal of the charges.

For defendants charged with a nonfelony, if the parties do not agree, the defense may move for an order dismissing the charges and referring the defendant to services in the diversion plan. The court must grant the motion if it finds that the defendant is amenable to the services and can safely receive services in the community. For defendants charged with a qualifying class C felony, if the parties do not agree, the court may grant a motion for a 30-day trial period in a diversion program with periodic monitoring, and following the 30-day trial period, may dismiss the criminal charges without prejudice and refer the defendant to the services described in the diversion program if the court finds that the defendant meaningfully engaged in the diversion program.

A forensic navigator must be assigned to assist the person who is referred to services in a diversion program for up to six months while engaging in the services, and the forensic navigator must provide monthly status updates to the court and the parties. Forensic navigators must collaborate with available *Trueblood* settlement diversion programs if they are accessible in the geographic location where criminal charges are filed.

Clinical Intervention Specialists and Jails.
Jails must allow clinical intervention specialists to have access to individuals who are referred to receive competency evaluation or restoration services, and to all records related to the health or conduct of the person while incarcerated. A clinical intervention specialist is a licensed professional with prescribing authority who is employed or contracted by the DSHS to provide direct services, oversight, and monitoring of the behavioral health status of in-custody defendants referred for competency evaluation or restoration services. Clinical intervention specialists are subject to the security and background investigation requirements of jails. The DSHS must establish a memorandum of understanding and any contracts needed with a jail to address the terms and conditions of allowing access to defendants and their records.

Clinical intervention specialists must work collaboratively with jail health services to ensure appropriate prescriptions, medication compliance monitoring, and access to supportive behavioral health services for the person. Clinical intervention specialists must also

coordinate with forensic navigators and the DSHS to assist in making recommendations for appropriate placements, including participation in an OCRP or diversion program. A clinical intervention specialist must notify the DSHS if an individual appears to have stabilized and a new competency evaluation is appropriate to reassess the individual's need for competency restoration treatment.

A jail or juvenile detention facility may not discontinue any drug prescribed to a person to treat a serious mental illness by a state hospital, other state facility, behavioral health agency, or medical provider, if the individual is medically stable on the drug. The jail may not substitute a different drug in the same therapeutic class unless: the drug is a generic version of a name brand drug which is chemically identical to the name brand drug; or the drug cannot be prescribed due to a drug recall or removal from the market, or medical evidence indicating the drug has no therapeutic effect. This includes situations in which the person returns to a jail or juvenile detention facility directly after undergoing treatment in a state hospital, behavioral health agency, OCRP, or prison. The DSHS must establish a program to reimburse jails or juvenile detention facilities for the costs of any drugs the jail or juvenile detention facility does not otherwise have available and must continue prescribing for a person who is medically stable on the drug.

When the DSHS seeks a court order authorizing involuntary medication for purposes of competency restoration, the petition must also seek authorization to continue involuntary medication for purposes of maintaining the level of restoration in the jail or juvenile detention facility following the restoration period.

Individuals with an Intellectual or Developmental Disability, Dementia, or Traumatic Brain Injury.
An individual found incompetent to stand trial and not restorable due to an intellectual or developmental disability, dementia, or traumatic brain injury, must not be referred for competency restoration unless the highest current criminal charge is a violent offense or sex offense. The DSHS must develop a process for connecting these individuals to available wraparound services and community-based supports. Requirements are specified for individuals who are current clients of the DDA or ALTSA, and for individuals who are not current clients, including connecting the person with the forensic navigator to determine if the person is eligible for diversion, supportive housing, or case management programs as a *Trueblood* class member.

The DSHS must offer to transition the individual in services either directly from the jail or as soon as practicable without keeping the person in an inpatient facility for longer than clinically necessary. If appropriate, the DSHS may return the person to the person's home or another less restrictive setting, which may include provision of supportive services to help the person remain stable. The individual is not required to accept DDA, ALTSA, or other diversionary services as a condition of having the criminal case dismissed without prejudice, provided the individual meets the criteria.

Subject to specific funding for this purpose, the DSHS must develop a program with wraparound services and housing supports for persons who have had involvement in the criminal justice system and been found incompetent to stand trial and not restorable based on an intellectual or developmental disability, dementia, or a traumatic brain injury and who do not meet criteria under other programs.

The University of Washington must implement a pilot project to provide short-term stabilization and transition support for individuals found incompetent to stand trial due to an intellectual or developmental disability who are or have been *Trueblood* class members. The pilot project must be implemented in three phases, beginning December 1, 2023. The DSHS must collaborate with the University of Washington on the pilot project, including assistance in identifying resources and determining eligibility. The University of Washington must report to the Legislature on the pilot project's outcomes and recommendations for improvement, as well as on the background of current and former *Trueblood* class members with intellectual and developmental disabilities.

Other.
Subject to specific funding for this purpose, the Health Care Authority (HCA) must require programs it contracts with to increase compensation for staff in OCRPs to provide competitive compensation levels to improve recruitment and allow for full implementation of OCRPs.

The DSHS must coordinate with cities, counties, hospitals, and other entities to identify locations that may be commissioned or renovated for use in treating persons committed to the DSHS for competency evaluation or restoration, civil conversion, or treatment following acquittal by reason of insanity. The DSHS may provide capital grants to entities to accomplish these purposes, subject to funding provided for this specific purpose.

The DSHS must collect data so that information can be retrieved based on unique individuals, their complete Washington criminal history, and referrals for forensic services.

Beginning January 1, 2024, the HCA must implement a pilot project in phase one *Trueblood* settlement regions, by creating three behavioral health crisis systems regional coordinator positions in the Pierce, Southwest, and Spokane behavioral health administrative services organization regions. The purpose of the pilot project is to support and assist participants across the voluntary, involuntary, and forensic behavioral health systems to better understand the intersection of these systems and develop strategies for improved coordination and access to services across systems. The behavioral health crisis systems regional coordinators must: develop a robust understanding of the local voluntary, involuntary, and forensic behavioral health systems; identify challenges and develop strategies for improved access to services across systems; work with local jurisdictions to establish or improve AOT programs and increase utilization of diversion programs and OCRPs; and provide recommendations on statutory and regulatory changes needed to improve coordination and access to services across behavioral health systems. The HCA

must issue an initial report by September 30, 2025, and a final report by September 1, 2026.

Technical changes are made to correct cross-references to statutory provisions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Sections 6, 7 and 9 of the bill contain an emergency clause and take effect immediately. The remainder of the bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) The state is experiencing a crisis with the *Trueblood* population. The goal of the bill is to try to prevent people from becoming *Trueblood* class members, including by ensuring there is a sufficient basis for ordering an evaluation and by looking at diverting people both prior to competency services or during that process, including by using AOT as an off-ramp from the system. It also provides options to transfer a person who is in a state hospital to a step-down facility.

The forensic system is significantly stressed and the state hospitals are at a crisis point with people on the wait list in larger numbers than ever before seen. The Legislature has made significant investments, including investing over $2 billion to support forensic beds, forensic navigators, diversion, and other programs. Yet referrals and wait lists are growing faster than available resources. It is impossible to keep up with the demand without significant policy changes. The Governor strongly supports advancing additional diversion and treatment options rather than pursuing competency and further overstressing the system.

Clinical intervention specialists will allow for ongoing behavioral healthcare for folks who are not getting adequate care while waiting in jail. Prohibiting jails from discontinuing or substituting medications after folks have been stabilized will help avoid repeat cycling through the competency system. Expansion of the forensic navigator program and incorporating AOT with the competency system will help move people out of the criminal system into an appropriate care model.

This bill makes some positive changes, but it will not break loose the log jam of defendants waiting to receive restoration services. Restoration care is intended to help people stand trial; it does not provide them with comprehensive behavioral healthcare. Creative strategies are needed to provide appropriate person-centered care to reduce unconstitutional wait times in crowded jails. It may be necessary to consider changes to the types and levels of offense subject to restoration.

(Opposed) Much more must be done to make a meaningful impact on current restoration wait times. Class members ordered into restoration are waiting 10 and 11 months or more, and they are experiencing profound suffering on a day-to-day basis. This crisis is the subject of an upcoming contempt hearing in federal court in which the judge may order significant fines and serious limitations on inpatient restoration. This bill does not address the demand for restoration services on the front end nor increase capacity for services on the back end. The state must prioritize who receives inpatient restoration to only the more serious felony cases. Ordering restoration on a misdemeanor or a low-level felony does not protect public safety nor promote long-term stability. Requiring a defendant who lacks competence to have an open colloquy on the record risks violating the defendant's constitutional rights.

(Other) Competency restoration is not treatment and does not lead to long-term recovery. What is needed is diversion of people out of the criminal system and into treatment programs so they do not continue to cycle through the system. Ending or severely reducing the number of misdemeanor restorations would be a good step. A significant portion of jail populations are people awaiting competency evaluations or transport for inpatient competency restoration. Local governments are partners with the state in this process and will need real resources to make this bill implementable at the local level.

Clinical intervention specialists working in the jails are a good change, but the Legislature should make sure that jails do not become co-defendants in the *Trueblood* lawsuit. Requiring jails to maintain the same medication the state provides could be extraordinarily expensive. The state should either provide the medication to the person through the jail or pay for it entirely. The statute authorizing involuntary medication orders should be amended so that they also apply when the person is transferred to jail.

The provision requiring a finding of a genuine doubt as to competency violates the constitutional rights of the accused and defense counsel's obligations. The license revocation provision has nothing to do with the title of the bill and is in violation of the single subject doctrine. It also violates equal protection by treating those with mental illness differently. The bill does not address diverting cases and reducing the number of people undergoing competency restoration services. Increased availability of OCRPs and diversion programs are needed.

Staff Summary of Public Testimony (Appropriations):

(In support) The purpose of competency restoration is ensuring those accused of a crime can stand trial. It does not exist to provide individuals with comprehensive behavioral healthcare. This bill allows courts to divert certain defendants to more appropriate treatment and limits the time some defendants may spend in restoration. These actions will free up space in the system and reduce wait times and costs.

The bill increases compensation for workers providing outpatient restoration and ensures

defendants with developmental disabilities, traumatic brain injuries, or dementia are referred to appropriate care. It provides for stabilizing individuals through the provision of appropriate medications. While there will be expenses, these provisions will streamline the restoration system and lead to cost savings in the long term. There are some issues related to diversion capacity, security standards, and liability for clinical intervention specialists that should be addressed.

Individuals in crisis often find themselves in the criminal legal system before they find treatment. The bill, as referred by the policy committee, directs individuals who are in crisis to treatment that will get them into long-term recovery, rather than just temporary legal competency. Competency restoration is not treatment and more resources for treatment are needed. The bill provides for a meaningful decriminalization of behavioral health by focusing on that diversion to treatment.

The state has been under court orders in the *Trueblood* lawsuit since 2015 and continues to struggle to comply with the constitutional requirements. The Legislature has invested billions of dollars between the capital and operating budgets to address these requirements and yet the referrals continue to climb. There has been a 60 percent overall referral increase over the last eight years, with a 145 percent increase in inpatient referrals.

Policy changes, in addition to resource investments, must be made in order to address the *Trueblood* requirements and to address the needs of behavioral health individuals in the criminal justice system. The amendments that came out of the policy committee and those being considered today take excellent steps towards providing more treatment and diversion, without taking inpatient competency restoration off the table.

(Opposed) There were several good amendments made in the policy committee but others are still needed, and one of the amendments creates significant public safety concerns. Section 7 requires the court to dismiss and refer for diversion most class C felonies, such as hate crime offenses. The standard for competency to stand trial versus the standard for involuntary commitment under the Involuntary Treatment Act are very different. This means that people can be dismissed out of court and not be subject to involuntary treatment in the community. It is unclear what law enforcement officers can do, if anything, when the officer encounters a person committing new criminal offenses, knowing that the person is not competent to stand trial. This is not good for the person, nor is it good for public safety.

Competency restoration for misdemeanors is already limited by state law and, given the current lack of capacity for restoration services, prosecutors are already limiting the number and types of cases for which they pursue competency restoration. The limited cases for which they do pursue competency restoration services are situations in which the individual would not likely do well in the outpatient model envisioned in the bill. The bill should return to the Senate version which made improvements to the competency restoration system without cost burdening and limiting cities.

(Other) This bill includes a constitutional violation in the bill title. The bill is entitled "Providing Timely Competency Evaluations and Restoration Services to Persons Suffering from Behavioral Health Disorders." The license revocation provisions are a distinct violation of Article II, Section 19, the Single Source Doctrine, and they should be removed to save time and money related to litigation.

The bill mandates issuance of a warrant if a person does not appear for an outpatient competency evaluation. It currently takes almost a full year to get an outpatient evaluation, and to mandate issuance of a warrant violates the judicial immunity and ability to do that.

Under the version of the bill being considered today, a person who has committed a misdemeanor and is incompetent to stand trial will be released to the community. That does not get that person into treatment, and it creates a cycle of repetitive low-level crimes. The bill should revert back to the version approved by the Senate that required competency restoration for misdemeanors.

In the Kent Municipal Court, 125 defendants were referred for competency evaluation last year. Of those, 35 were referred for restoration, meaning they were found not competent and either charged with a serious offense or the city established there was a compelling state interest in restoration. Only seven of those 35 were transported for restoration, and all of those were prior to May. Since then, every case, regardless of the seriousness, was dismissed after restoration was ordered because there was a failure to transport.

Section 7 of the version being considered today limits the types of felony cases, as well as some of the misdemeanor cases, that will be referred for restoration. It also limits the time for some of these services. There is a challenging class of individuals that frequently cycles through competency restoration and, in some communities, competency restoration is the only type of mental health service that many of these individuals have access to.

Persons Testifying (Civil Rights & Judiciary): (In support) Senator Manka Dhingra, prime sponsor; Johanna Bender; Amber Leaders, Office of the Governor; Kevin Bovenkamp, Department of Social and Health Services Behavioral Health Administration; and Michael White, King County.

(Opposed) Kimberly Mosolf, Disability Rights Washington; and Nathan Bays, King County Department of Public Defense.

(Other) Michael Finkle, District and Municipal Court Judges Association; James McMahan, Washington Association of Sheriffs and Police Chiefs; Kari Reardon, Law Offices of Kari Reardon, LLC; Thomas Kinlen, Department of Social and Health Services Behavioral Health Administration; Ryan Mello, Pierce County Council, District 4; and Melanie Smith, National Alliance on Mental Illness Washington.

Persons Testifying (Appropriations): (In support) Michael White, King County; Melanie

Smith, National Alliance on Mental Illness Washington; and Amber Leaders, Office of the Governor.

(Opposed) Lindsey Hueer, Association of Washington Cities; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Dana Ralph, City of Kent; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): Jessica Giner, Renton Municipal Court; Jason Schwarz, Snohomish County Office of Public Defense; Lindi Westwood, Westwood Law Office; and Heidi Wachter, City of Lakewood.

Persons Signed In To Testify But Not Testifying (Appropriations): None.