

HOUSE BILL REPORT

E2SSB 5216

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to forensic competency and sanity examinations.

Brief Description: Revising forensic competency and sanity examinations.

Sponsors: Senate Committee on Children & Family Services & Corrections (originally sponsored by Senators Stevens and Hargrove).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/24/04, 2/25/04 [DP].

Brief Summary of Engrossed Second Substitute Bill

- Allows one person to examine the mental health of a defendant who has pled not guilty by reason of insanity or is suspected of not being competent to stand trial.
- Provides that a signed court order for a competency evaluation serves as the authority to access records that relate to the defendant's condition.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

Staff: Jim Morishima (786-7191).

Background:

When a defendant pleads not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or the motion of any party must appoint, or have the secretary of the Department of Social and Health Services designate, at least two qualified experts or professional persons. The experts or professional persons must examine and report on the mental condition of the defendant. At least one of the experts or professional persons must be approved by the prosecutor. At least one of the experts

or professional persons must be a developmental disabilities professional if any party advises the court that the defendant may be developmentally disabled. The court may order the defendant committed to a secure public or private mental health facility for a period of time necessary to complete the examination, not to exceed 15 days.

The Mentally Ill Offender Act of 1998, required the Joint Legislative Audit and Review Committee (JLARC) to study the provisions of the act. As part of that study, the JLARC found that Western State Hospital conducts most of its competency evaluations on an outpatient basis and often waives the requirement that there be two expert or professional evaluators. Eastern State Hospital, on the other hand, conducts most of its evaluations on an inpatient basis and does not often waive the requirement that there be two expert or professional evaluators.

Summary of Bill:

Upon agreement of the parties, the court may appoint one expert or professional person to conduct the examination and report on the mental condition of the defendant.

The signed court order for the evaluation serves as the authority for the experts to access the defendant's mental health, medical, educational, and correctional records that relate to the defendant's condition.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: In the last four years, the number of forensic examinations for competency has doubled in the state. It is more efficient to do this with one expert instead of two. This is already being done in western Washington. This should also be done in eastern Washington, especially given the greater geographic distances in eastern Washington and the fact that there is currently a large waiting list for such evaluations in that part of the state.

Testimony Against: The provisions relating to the institutional records of the individual may violate federal laws prohibiting the disclosure of health information without permission. There should be an initial determination of competency before records are given to the experts. The court should not release the records carte blanche, but should release them on a case by case basis. Provisions in the existing law allowing the defendant to request the court's help in obtaining an expert are problematic because it is

unclear how an incompetent person would know whether or not they need an expert. The court should therefore be required to appoint such an expert.

Persons Testifying: (In support) Senator Stevens, prime sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; and Karl Brimmer, Department of Social and Health Services, Mental Health Department.

(Opposed) Michael Hanbey, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.