

HOUSE BILL REPORT

E2SSB 6274

As Reported by House Committee On:
Judiciary

Title: An act relating to competency restoration.

Brief Description: Changing provisions relating to competency restoration.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Regala, Stevens, Hargrove and Kline).

Brief History:

Committee Activity:

Judiciary: 2/26/04, 2/27/04 [DPA].

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

- Establishes what constitutes a "serious offense" for the purposes of authorizing involuntary medication to restore a defendant's competency to stand trial.
- Defines "nonfatal injuries" as that term is used in the statutes regarding criminal insanity and competency to stand trial.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

A person is incompetent to stand trial if he or she lacks the capacity to understand the nature of the proceedings or assist in his or her own defense. If the defendant's competency to stand trial is in doubt, the court must require the Department of Social and Health Services (DSHS) to designate qualified experts or professional persons to examine the defendant and report on his or her mental condition. For purposes of the

examination, the court may order the defendant committed to a hospital or other secure mental health facility for a specified time.

A. Definition of "nonfatal injuries"

If an incompetent defendant charged with a nonfelony offense has a history of one or more violent acts, then the court must order that the defendant be placed in a secure mental health facility for a specific period to restore the defendant's competency.

"Violent act" means behavior, including attempts and threats, that: (a) resulted in or could have resulted in homicide, nonfatal injuries, or substantial damage to property; or (b) behavior that recklessly creates an immediate risk of serious physical injury to another person. The phrase "nonfatal injuries" is not defined.

In a recent Washington Court of Appeals case, *Born v. Thompson*, the court held that, in the context of the competency statutes, "nonfatal injuries" should be read to mean "serious physical injuries." "Serious physical injuries" is not defined in statute. However, the criminal code defines "bodily injury" as physical pain or injury, illness, or an impairment of physical condition. The *Born* case has been appealed to the state Supreme Court.

B. Involuntary medication to restore competency for serious nonviolent offenses

The United States Supreme Court has recognized that a person has a significant constitutionally protected liberty interest in avoiding the unwanted administration of antipsychotic medication.

In a recent case, *Sell v. United States*, the United States Supreme Court addressed the circumstances under which the state may administer antipsychotic drugs involuntarily to a mentally ill defendant in order to render the defendant competent to stand trial for serious but nonviolent crimes.

The court held that the state may involuntarily administer such drugs to a defendant facing serious but nonviolent criminal charges to restore the defendant's competency only if certain criteria are met. The court recognized that a case-by-case inquiry is necessary in weighing the government's interest for timely prosecution against the individual's rights.

Summary of Amended Bill:

A. Definition of "nonfatal injuries"

For the purposes of criminal insanity and competency, "nonfatal injuries," as that term is used in the definition of "violent act," means physical pain or injury, illness, or an

impairment of physical condition and shall be construed to be consistent with the definition of "bodily injury" as used in the criminal code.

B. Involuntary medication to restore competency

For the purposes of when a court may authorize involuntary medication to restore a defendant's competency, guidelines are created to determine what is a "serious" offense.

A pending charge of one or more of the following is considered a serious offense in the context of competency restoration:

- (a) any violent offense, sex offense, serious traffic offense, and most serious offense;
- (b) any offense that is a crime against persons, except a nonfelony counterfeiting offense;
- (c) any offense contained in the chapter dealing with firearms and dangerous weapons;
- (d) any offense listed as a harassment offense or domestic violence offense;
- (f) any violation of the drug laws that is a class B felony; or
- (g) any violation of an equivalent city or county ordinance.

In addition, the court may determine that a pending charge not listed above is a serious offense for the purposes of competency restoration when the conduct in the charged offense is serious, after considering the following factors:

- (a) the charge includes an allegation that the defendant actually inflicted bodily or emotional harm to another or that the defendant created a reasonable apprehension of bodily or emotional harm;
- (b) the extent of the impact of the offense on the basic human need for security;
- (c) the number and nature of related charges pending against the defendant;
- (d) the length of potential confinement if the defendant is convicted; and
- (e) the number of potential and actual victims or persons impacted by the alleged act.

When making a determination whether to order involuntary medications to restore the defendant's competency, the court must inquire into, and must be told, whether the defendant is the subject of a pending civil commitment or has been ordered into involuntary treatment under a civil commitment proceeding.

The DSHS must study and identify in its budget request the need, options, and plans to address the increasing need for capacity in the forensic units of the state hospitals.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill removed the provision allowing cities and counties to designate, by ordinance, "serious" offenses.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: It's important to have consistency on how laws are interpreted, especially related to public safety. The bill gives legislative direction regarding what "nonfatal injuries" mean because the court defined it more broadly than the Legislature intended. The Department of Social and Health Services supports the concept of competency restoration. This bill has potential fiscal impact because of the number of medication hearings that may result.

Testimony Against: This bill is premature. The State Supreme Court has accepted review of one of the cases this bill addresses. Any action by the Legislature will be too hasty. The bill creates a long and confusing list of offenses. All of those felonies listed are going to be deemed "serious" anyway, and there are already classifications of "violent" and "most serious" offenses in existing law. The real problematic area is misdemeanors and competency evaluations, and hearings are very expensive, so courts are not going to proceed with such timely and costly proceedings on minor misdemeanors. The bill is not needed. The competency laws are already working. The Legislature followed the dangerously mentally ill offender laws with a study, and it found that the competency laws are working quite well.

Persons Testifying: (In support) Senator Regala, prime sponsor; and Karl Brimmer, Department of Social and Health Services.

(Opposed) Anita Paulsen, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.