

FINAL BILL REPORT

E2SSB 6274

PARTIAL VETO

C 157 L 04

Synopsis as Enacted

Brief Description: Changing provisions relating to competency restoration.

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

Senate Committee on Children & Family Services & Corrections

Senate Committee on Ways & Means

House Committee on Judiciary

Background: In May 2003, the Washington Court of Appeals handed down a decision in *Born v. Thompson*, 117 Wn. App. 57 (2003), that interpreted the term "non-fatal injuries" in the context of competency evaluations and restoration to be equivalent to "serious bodily injury." This interpretation restricts those offenders whose competency may be restored and differs from the policy of the mentally ill offender legislation from which the term was taken. That policy was based on information that, among mentally ill persons with criminal histories, violent acts were indicative of future dangerousness even if the results of those acts were not especially serious. Consequently, the 1998 legislation expanded the meaning of "likelihood of serious harm" to include threats when there was a history of violent acts and provided a definition of violent act that expanded what could be considered violent.

In June 2003, the US Supreme Court decided *Sell v. United States*, ___ US ___ (2003). In the *Sell* decision, the court divided the issue of seriousness of the offense from whether an offense was violent in the context of court ordered involuntary medication for the purpose of competency restoration. The *Sell* decision:

- explicitly excludes discussion of violent offenses;
- makes it unconstitutional to order involuntary medication to restore the competency of defendants when the charged crime is neither serious nor violent;
- establishes a four-prong test to order involuntary medication for the purpose of competency restoration for persons charged with crimes that are serious but not violent.

Two major concerns were raised following the *Sell* decision. First, Washington law did not divide crimes into "serious" and "non-serious" and there would be little consistency across the state in how those determinations would be made. Second, one prong of the *Sell* test requires that it is "substantially likely" that involuntary medication will restore the defendant's competency. Making a "substantially likely" assessment partly depends on the length of time permitted to restore competency. The current statute establishing the time periods for non-felony competency restoration has not been consistently interpreted.

Summary: The term "non-fatal injuries" means the same thing as "bodily injury."

For purposes of determining whether a court may order involuntary medication to restore or maintain a defendant's competency, offenses in listed categories are serious offenses. If a defendant is charged with a crime that is not listed as a serious offense, the court may determine that, under the factual circumstances of the case, the offense is serious if it meets the stated criteria.

Release of mental health information to a court in which there is a pending motion for involuntary medication to restore competency is mandatory.

Votes on Final Passage:

Senate 49 0
House 96 0 (House amended)
Senate 47 0 (Senate concurred)

Effective: March 26, 2004

Partial Veto Summary: The Governor vetoed Section 6, which would have required the Department of Social and Health Services to study and identify the need, options and plans to address the increasing need for capacity in the state hospital forensic units.