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**SUBSTITUTE HOUSE BILL 1767**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Lovick, Campbell, Mielke, Lantz and O'Brien; by request of Department of Social and Health Services)

READ FIRST TIME 03/03/03.

1 AN ACT Relating to forensic competency examinations; amending RCW  
2 10.77.060; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature intends to authorize the  
5 performance of forensic competency examinations conducted by the  
6 department of social and health services by a single examiner in a  
7 local jail or detention or correctional facility or out of custody for  
8 defendants charged with misdemeanors and gross misdemeanors. A  
9 forensic competency examination performed either in a jail or detention  
10 or correctional facility or in an appropriate community setting by one  
11 examiner is more cost-effective and can lead to a shorter total period  
12 of detention. Public health, safety, and welfare are promoted when  
13 defendants are detained in the jail or can be released to an  
14 appropriate community setting rather than placed in a mental health  
15 facility where vulnerable persons are being treated.

16 **Sec. 2.** RCW 10.77.060 and 2000 c 74 s 1 are each amended to read  
17 as follows:

18 (1)(a) Whenever there is reason to doubt the competency of a

1 defendant who has been charged with a misdemeanor or gross misdemeanor,  
2 the court on its own motion or on the motion of any party shall request  
3 the secretary to designate a qualified expert or professional person to  
4 examine, in a local jail or detention or correctional facility or in an  
5 appropriate community setting, and report upon the mental condition of  
6 the defendant. The designated expert or professional person shall be  
7 a developmental disabilities professional if the court is provided  
8 evidence by any party that the defendant may be developmentally  
9 disabled. The report of the results of the examination, in a local  
10 jail or detention or correctional facility or in an appropriate  
11 community setting, shall be submitted to the court within fifteen days  
12 of the expert or professional person receiving the order of the court,  
13 charging documents, and the relevant discovery materials. If  
14 clinically necessary and requested by the designated expert or  
15 professional person, the court may order the defendant committed to a  
16 hospital or other suitably secure public or private mental health  
17 facility for a period of time necessary to complete the examination,  
18 but not to exceed fifteen days from the time of admission to the  
19 facility.

20 (b) Whenever a defendant has pleaded not guilty by reason of  
21 insanity pursuant to RCW 10.44.030, or there is reason to doubt ((his  
22 or her)) the competency of a defendant charged with an offense other  
23 than a misdemeanor or gross misdemeanor, the court on its own motion or  
24 on the motion of any party shall either appoint or request the  
25 secretary to designate at least two qualified experts or professional  
26 persons, one of whom shall be approved by the prosecuting attorney, to  
27 examine and report upon the mental condition of the defendant. Upon  
28 agreement of the parties, the court may designate one expert or  
29 professional person to conduct the examination and report on the mental  
30 condition of the defendant. At least one of the experts or  
31 professional persons appointed shall be a developmental disabilities  
32 professional if the court is ((advised)) provided evidence by any party  
33 that the defendant may be developmentally disabled. For purposes of  
34 the examination, the court may order the defendant committed to a  
35 hospital or other suitably secure public or private mental health  
36 facility for a period of time necessary to complete the examination,  
37 but not to exceed fifteen days from the time of admission to the  
38 facility.

1        ~~((b))~~ (c) When a defendant is ordered to be examined or committed  
2 for inpatient examination under this subsection (1), the court may  
3 delay granting bail until the defendant has been ~~((evaluated))~~ examined  
4 for competency or sanity and appears before the court. Following the  
5 ~~((evaluation))~~ examination, in determining bail the court shall  
6 consider: (i) Recommendations of the expert or professional persons  
7 regarding the defendant's competency, sanity, or diminished capacity;  
8 (ii) whether the defendant has a recent history of one or more violent  
9 acts; (iii) whether the defendant has previously been acquitted by  
10 reason of insanity or found incompetent; (iv) whether it is reasonably  
11 likely the defendant will fail to appear for a future court hearing;  
12 and (v) whether the defendant is a threat to public safety.

13        (2) The court may direct that a qualified expert or professional  
14 person retained by or appointed for the defendant be permitted to  
15 witness the examination authorized by subsection (1) of this section,  
16 and that the defendant shall have access to all information obtained by  
17 the court appointed experts or professional persons. The defendant's  
18 expert or professional person shall have the right to file his or her  
19 own report following the guidelines of subsection (3) or (4) of this  
20 section. If the defendant is indigent, the court shall upon the  
21 request of the defendant assist him or her in obtaining an expert or  
22 professional person.

23        (3) The report of the examination regarding competency must include  
24 the following:

- 25        (a) A description of the nature of the examination;  
26        (b) A diagnosis of the mental condition of the defendant;  
27        (c) An opinion as to competency; and  
28        (d) An opinion as to whether the defendant should be evaluated by  
29 a county designated mental health professional under chapter 71.05 RCW,  
30 and an opinion as to whether the defendant is a substantial danger to  
31 other persons, or presents a substantial likelihood of committing  
32 criminal acts jeopardizing public safety or security, unless kept under  
33 further control by the court or other persons or institutions.

34        (4) The report of the examination regarding sanity shall include  
35 the following:

- 36        (a) A description of the nature of the examination;  
37        (b) A diagnosis of the mental condition of the defendant;

1           (c) (~~If the defendant suffers from a mental disease or defect, or~~  
2 ~~is developmentally disabled, an opinion as to competency;~~  
3           ~~(d) If the defendant has indicated his or her intention to rely on~~  
4 ~~the defense of insanity pursuant to RCW 10.77.030,)~~ An opinion as to  
5 the defendant's sanity at the time of the act;  
6           (~~(e)~~) (d) When directed by the court, an opinion as to the  
7 capacity of the defendant to have a particular state of mind which is  
8 an element of the offense charged;  
9           (~~(f)~~) (e) An opinion as to whether the defendant should be  
10 evaluated by a county designated mental health professional under  
11 chapter 71.05 RCW, and an opinion as to whether the defendant is a  
12 substantial danger to other persons, or presents a substantial  
13 likelihood of committing criminal acts jeopardizing public safety or  
14 security, unless kept under further control by the court or other  
15 persons or institutions.  
16           (~~(4)~~) (5) The secretary may execute such agreements as  
17 appropriate and necessary to implement this section.

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