

HOUSE BILL REPORT

HB 1100

As Reported by House Committee On:
Civil Rights & Judiciary
Appropriations

Title: An act relating to competency to stand trial evaluations.

Brief Description: Evaluating competency to stand trial.

Sponsors: Representative Jenkins.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/16/19, 1/25/19 [DPS];
Appropriations: 2/27/19, 2/28/19 [DPS(CRJ)].

Brief Summary of Substitute Bill

- Extends the reimbursement requirement expiration date to June 30, 2022.
- Provides for various notification requirements.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Jenkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Ingrid Lewis (786-7289).

Background:

Competency Evaluations.

A criminal defendant 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. When a defendant's competency 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Competency evaluations may occur in a variety of locations, but generally occur in a jail or detention facility, the community, or one of the state hospitals. A defendant who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues.

In *Trueblood v. the Department of Social and Health Services*, 822 F.3d 1037 (2015), a federal district court found that the State of Washington was violating the constitutional rights of in-jail defendants awaiting 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.

County Reimbursement for Competency Evaluations.

The DSHS is required to reimburse a county for the cost of appointing a qualified expert to conduct a competency evaluation for a defendant in jail if:

- the DSHS has not met performance targets for competency evaluations for in-custody defendants in 50 percent of the cases submitted by the county during the most recent quarter; or
- the DSHS in the most recent quarter did not perform at least one-third of the number of jail-based competency evaluations for in-custody defendants as were performed by qualified experts appointed by the court.

The DSHS must reimburse the county for the costs of the competency evaluator in an amount that is at least equivalent to the amount for evaluations conducted by the DSHS.

The reimbursement requirement is subject to funds appropriated for this purpose, and it is set to expire June 30, 2019.

Summary of Substitute Bill:

The Department of Social and Health Services (DSHS) is required to notify counties of eligibility two weeks after the end of the current quarter to assist with county decisions regarding assignments to qualified experts or professional persons. A county remains eligible for reimbursement for any evaluations assigned to a qualified expert or professional person prior to a notification. The DSHS is required to provide notice to a county using a mutually agreed upon delivery method.

The expiration date is extended from June 30, 2019, to June 30, 2022. Reimbursement is subject to funds appropriated for this purpose.

Substitute Bill Compared to Original Bill:

The substitute bill reinstates the grounds for which a county may seek reimbursement and defines "county" for the purposes of calculation. The substitute bill also provides for various notification requirements.

Appropriation: None.

Fiscal Note: Requested on January 14, 2019.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on June 30, 2019.

Staff Summary of Public Testimony:

(In support) This bill has passed every couple of years since the *Trueblood* case, and it is still needed. Allowing for competency evaluations to be completed by counties and for reimbursement helps with getting timely evaluations done.

The current law provides a mechanism by which counties can be reimbursed for evaluations done in the jail by an independent contracted panel evaluator. Pierce County requested this program and has had it implemented since the statute went into effect. It has been viewed as a win-win-win because the evaluations get done in a timely manner. It is most likely faster than the seven days and faster than the Department of Social and Health Services (DSHS) can complete them. It is a win for the DSHS because it allows them to deploy scarce evaluator resources elsewhere. It is a win for the defendants who are more quickly evaluated. If they are competent, their cases can get right back on track, and that benefits the entire criminal justice system; if they are not competent then they can get onto the waiting list and await a competency restoration. People in the *Trueblood* class are extremely expensive to care for in jail and tend to decompensate while in jail.

If the program is eliminated and allowed to expire, there will not be enough evaluators, delays in evaluations, and delays throughout the justice system, just as before. At a minimum, the sunset provision should be either removed or extended. There are some concerns about removing the triggering language. The risk that is posed by periodic interruptions is losing the available contracted panel evaluators.

(Opposed) None.

(Other) The bill removes all of the triggering language, and it should still be included for fiscal and other reasons. The current statute allows counties to contract with providers during periods of time when the DSHS is unable to substantially meet the required timeframes; the current requirement is effective. Removing the triggering language allows counties to go straight to the panel evaluators when state resources might be available. It creates costs to potentially escalate when the DSHS has resources. Another challenge is quality assurance for the evaluations being performed outside of the DSHS. The county-based evaluators are not trained or provided the training that the DSHS evaluators are subject to.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Elizabeth Martin, Pierce County Superior Court; and Derek Young, Pierce County Council.

(Other) Sean Murphy and Tom Kinlen, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Civil Rights & Judiciary be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Andy Toulon (786-7178).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Civil Rights & Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Requested on February 22, 2019.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect on June 30, 2019.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.