

HOUSE BILL REPORT

HB 2152

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to updating terminology related to criminal insanity and competency to stand trial.

Brief Description: Updating terminology related to criminal insanity and competency to stand trial.

Sponsors: Representatives Thai, Mosbrucker, Reed, Ormsby, Taylor, Farivar, Goodman, Paul, Fosse and Davis.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/23/24, 1/26/24 [DPS].

Brief Summary of Substitute Bill

- Updates terminology in laws relating to criminal insanity and competency to stand trial.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Taylor, Chair; Farivar, Vice Chair; Goodman, Peterson, Thai and Walen.

Minority Report: Do not pass. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives Abbarno and Cheney.

Staff: Edie Adams (786-7180).

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

Background:

State forensic laws govern procedures and requirements relating to competency to stand trial and criminal insanity. If a question regarding a defendant's competency to stand trial is raised, or if a defendant pleads not guilty by reason of insanity, the court must appoint a qualified expert to evaluate and report on the defendant's mental condition.

A person is incompetent to stand trial if the person, as a result of a mental disease or defect, lacks the capacity to understand the nature of the criminal proceedings or to assist in his or her own defense. A person who is incompetent to stand trial may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. If the court finds the defendant is not competent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of competency restoration treatment or dismiss the charges without prejudice.

A defendant is not guilty by reason of insanity if a judge or jury finds that, at the time of the commission of the offense, the defendant had a mental disease or defect that affected the defendant to such an extent that either the defendant was unable to perceive the nature or the quality of the act charged or was unable to tell right from wrong with reference to the particular act charged.

Summary of Substitute Bill:

Terminology relating to competency to stand trial and mental disease or defect is updated in the chapter of law governing criminal insanity and competency to stand trial, as well as other provisions outside of that chapter that refer to these terms. The terminology is changed as follows:

Current Law	House Bill 2152
competent	able to proceed
competent to stand trial	able to proceed to trial
competency	ability to proceed
competency to stand trial	ability to proceed to trial
incompetent	unable to proceed
incompetent to stand trial	unable to proceed to trial
incompetency	inability to proceed
incompetency to stand trial	inability to proceed to trial
capacity	present ability
incapacity	inability

competency evaluation	ability to proceed evaluation
competency restoration	restoration or restoration treatment
mental disease or defect	mental health condition

"Inability to proceed" means a person lacks the present ability to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of a mental disorder. "Ability to proceed" or "able to proceed" refers to the present ability of a person to understand the nature of the criminal proceedings against him or her or to assist in his or her own defense. "Restoration" or "restoration treatment" means a process by which a defendant adjudicated unable to proceed undergoes court ordered mental health treatment combined with didactic instruction for the purpose of rendering the defendant amenable to trial.

Legislative intent is stated that the changes to terminology are not intended to change the meaning of the underlying concepts and do not change the applicability or effect of prior case law related to criminal insanity or inability to proceed to trial.

Substitute Bill Compared to Original Bill:

The substitute bill replaces "mental disease or defect" with "mental health condition" rather than "mental disorder," and removes the definition of "mental disorder." The substitute bill removes changes to terminology in statutes addressing grounds for denying or revoking explosives licenses issued by the Department of Labor and Industries, and driver's licenses issued by the Department of Licensing.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) The bill addresses the stigma that people experience around mental health issues. Updating the terminology will recognize the humanity of individuals who deal with these issues. It is important to recognize how certain terminology can harm people. The bill does not change the current standard. It expressly states that the meaning of the terms is not changed and prior case law is intended to apply to the new terms.

The bill removes the stigmatizing terms of "incompetency" and its variants and "mental disease or defect" and replaces them with non-stigmatizing words. It is not just the people

in court who hear themselves called incompetent or a mental defect, but also family members, attorneys, judges, and court staff. All individuals, including people with mental illnesses, should be treated with respect, including in the judiciary system. Stigma, prejudice, and discrimination against those with mental conditions exist, both in public and in words in statutes, and that will not change unless efforts are made to change it. Efforts have been made to address other types of pejorative phrases, and it is time that the same is done for people who have mental illnesses.

(Opposed) This bill has been brought forward too quickly and without consulting enough people. Input is needed from a variety of stakeholders, including forensic evaluators and clinicians, the Department of Social and Health Services, prosecutors, and other attorneys working in the system. The term "mental disorder" makes sense in the context of considering the possibility of an involuntary civil commitment. The term does not make sense in the much narrower context of competency to stand trial or capacity to have a fair criminal trial. It is too broad.

(Other) It is important to decrease the stigma that people in the criminal justice system face by being labeled incompetent. However, changing the term "mental disease or defect" to "mental disorder" raises concerns. Currently "mental disease or defect" is not defined. Whether a diagnosis is considered a mental disease or defect in the context of a not guilty by reason of insanity (NGRI) case is left up to the trier of fact. Changing the term to "mental disorder" broadens the diagnoses that could form the basis for an NGRI finding. This may disproportionately impact people with developmental disabilities, age-related cognitive disabilities, and other secondary diagnoses. The term should be replaced with "mental health condition" and be left undefined to avoid any unintended changes in law.

Changing terminology to "unable to proceed" or "inability to proceed" also raises concerns. These phrases are commonly used in court, but are typically followed by a qualifier, for example, unable to proceed because the witness is not available. This common phrase will now have a different meaning, which will cause confusion. Current terminology is well-understood and accepted in Washington and nationally by attorneys, judges, advocates, victims, experts, and academics.

There are many issues with the statute governing competency to stand trial and criminal insanity. A workgroup should be appointed to thoroughly review and address the comprehensive changes that are needed.

Persons Testifying: (In support) Representative My-Linh Thai, prime sponsor; Michael Finkle, District and Municipal Court Judges' Association; and Michael Transue, National Alliance on Mental Illness.

(Opposed) Rebecca Vasquez, King County Prosecuting Attorney's Office.

(Other) Jennifer Bartlett, Washington State Office of Public Defense; Kari Reardon, Washington Defender Association, Washington Association of Criminal Defense Lawyers;

Chloe Merino; Lindsey Hueer, Association of Washington Cities; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.