

HOUSE BILL REPORT

HB 1359

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to reviewing laws related to criminal insanity and competency to stand trial.

Brief Description: Reviewing laws related to criminal insanity and competency to stand trial.

Sponsors: Representatives Thai, Abbarno, Eslick, Goodman and Davis.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/5/25, 2/19/25 [DPS].

Brief Summary of Substitute Bill

- Establishes a task force to review laws related to criminal insanity and competency to stand trial, and to recommend specific law changes.
- Recodifies sections of law relating to forensic mental health under topical subject headings.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Salahuddin, Thai and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Abell, Assistant Ranking Minority Member; Burnett and Graham.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Jacobsen.

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.

Staff: Eric Lopez (786-7290) and Edie Adams (786-7180).

Background:

Forensic Mental Health Laws.

The forensic mental health system addresses the evaluation and treatment of individuals with mental health issues who are involved in the criminal justice system. Forensic mental health laws address procedures and requirements relating to criminal insanity and competency to stand trial and are codified in chapter 10.77 RCW. The Department of Social and Health Services (DSHS) provides state-funded forensic mental health services throughout Washington related to the legal concepts of criminal insanity and competency to stand trial.

Criminal Insanity.

Criminal insanity arises when a criminal defendant requests a judge or jury to find them not guilty by reason of insanity (NGRI). This refers to the defendant's mental state at the time of the alleged crime. A person is NGRI of a criminal offense if, at the time of the act and as a result of a mental disease or defect, the person was unable to perceive the nature and quality of the act or unable to tell right from wrong with reference to the act.

A defendant who is found NGRI may be committed to a state hospital if a judge or jury finds that the defendant presents a substantial danger to other persons or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, and there is no less restrictive treatment than detention in a state hospital. The term of commitment may not exceed the maximum sentence for the offense for which the defendant was acquitted by reason of insanity.

Competency to Stand Trial.

A defendant has a constitutional right to not be tried for a crime if the defendant is incompetent to stand trial. Competency refers to the defendant's current mental state. A person is incompetent to stand trial in a criminal case if the person lacks the capacity to understand the nature of the proceedings or is unable to assist in their own defense. A person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. When the issue of competency is raised by any party or the court, the court must stay the proceedings for a competency evaluation provided by the DSHS or an appointed expert. After the evaluation, if the court finds that the defendant is incompetent to stand trial, the case must remain stayed and the court may order the defendant to undergo competency restoration treatment for the purpose of rendering the defendant amenable to trial.

Summary of Substitute Bill:

Creation of Task Force.

A task force is created to review laws related to criminal insanity and competency to stand trial. The task force must include:

- one member from each of the two largest caucuses of the House of Representatives and Senate;
- the Secretary of the DSHS or the Secretary's designee;
- the Secretary of the Department of Corrections or the Secretary's designee;
- the Director of the Health Care authority or the Director's designee;
- the Washington State Attorney General or the Attorney General's designee;
- the Director of the Washington State Office of Public Defense or the Director's designee; and
- 19 members appointed by the DSHS with input from various agencies representing courts, prosecutors and defense attorneys, law enforcement, victims and persons with lived experience, local governments, and other stakeholders.

Duties of Task Force.

The task force must:

- conduct a comprehensive review of existing law to identify barriers to fairness, efficiency, and public safety;
- consider language updates to improve clarity, reduce stigma, and improve coherence between legal and medical terminology; and
- make recommendations to remove barriers to diversion programs, treatment options, and services that would facilitate safe hospital discharges.

Staff support for the task force must be provided by the DSHS. The task force may form subcommittees, and contract with additional persons with specific technical expertise if an appropriation is provided. The task force must report its findings to the Governor and appropriate committees of the Legislature by December 1, 2026.

Recodification and Decodification of Laws Relating to Criminal Insanity and Competency to Stand Trial.

The code reviser is instructed to recodify sections within chapter 10.77 RCW to reorder and sort them under the following subheadings:

- Definitions;
- General;
- Authorized Leave and Furloughs;
- Community Notifications;
- Evaluations Under this Chapter;
- Criminal Insanity; and
- Competency to Stand Trial.

Five sections of chapter 10.77 RCW without continuing effect are decodified.

Substitute Bill Compared to Original Bill:

The substitute adds three members to the task force: one member to be designated by plaintiff's counsel in the *Trueblood* case; one member as a representative of a behavioral health administrative services organization; and one member as a labor representative designated by the Washington Federation of State Employees.

The substitute bill also includes two additional sections under the provisions recodifying sections of chapter 10.77 RCW under topical subject headings. RCW 10.77.010 is added under a "Definitions" heading and RCW 10.77.078 is included under the "Competency to Stand Trial" heading.

Appropriation: None.

Fiscal Note: Requested on January 31, 2025.

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

Staff Summary of Public Testimony:

(In support) The bill creates a task force to examine broader issues in the laws relating to competency and criminal insanity. The task force will provide a report to examine ways to improve statutory clarity with the goal of making these laws more responsive to the needs of all stakeholders. An additional seat on the task force for behavioral health administrative services organizations would benefit the task force as these are organizations at the forefront of both jail and diversion programs in general.

Much has changed over the past 50 years since the law was passed in 1973, including mental health diagnosis and treatment, knowledge and public view of mental illness, and the voice of advocacy groups. It is not uncommon for people to have multiple cases in different courts, with each court having a different mandatory process for each case. Competency and insanity laws do not provide any guidance for how a judge should reconcile those differences.

Similar legislation passed by the Legislature regarding protection orders has resulted in a much more modern and consistent statutory scheme. The realities of stigma, prejudice, and discrimination against those with a mental health condition won't change unless action is taken to change it.

Even highly experienced judges, who are well-versed in the laws of the state work tirelessly to understand and apply the current version of the statute. Courts of limited jurisdiction often get overlooked but have a higher level of cases and lack the same range of options as superior courts. Trial courts need clear direction from the Legislature on how to prioritize lower-level cases.

(Opposed) None.

(Other) There is a difference in trial level experience between district and municipal court. The task force should include prosecutor and defense representation both at the felony level and at the district court level because of how separate competency is addressed at each level.

The task force is missing a critical perspective. There is no designated seat for a labor representative, someone who understands both state service and the complex work of forensic evaluators. These professionals play an essential role in the competency evaluation and restoration process and so they should be included.

Persons Testifying: (In support) Russell Brown, WA Association of Prosecuting Attorneys; Melissa Johnson, District and Municipal Court Judges' Association; Judge Michael Finkle, District and Municipal Court Judges' Association; Judge Jessica Giner, District and Municipal Court Judges' Association; Brad Banks, Washington State Association of Counties; and Michael Transue, National Alliance on Mental Illness (NAMI).

(Other) Kari Reardon, WACDL and WDA; and Nicole Gomez, Washington Federation of State Employees, Lobbyist.

Persons Signed In To Testify But Not Testifying: None.