

SENATE BILL REPORT

2SHB 1359

As Reported by Senate Committee On:
Law & Justice, March 27, 2025
Ways & Means, April 7, 2025

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: House Committee on Appropriations (originally sponsored by Representatives Thai, Abbarno, Eslick, Goodman and Davis).

Brief History: Passed House: 3/5/25, 69-28.

Committee Activity: Law & Justice: 3/25/25, 3/27/25 [DPA-WM].
Ways & Means: 4/04/25, 4/07/25 [DPA (LAW), w/oRec].

Brief Summary of Amended 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.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Holy, Ranking Member;
Fortunato, Lovick, Salomon, Torres, Valdez and Wagoner.

Staff: Ryan Giannini (786-7285)

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: Do pass as amended by Committee on Law & Justice.

Signed by Senators Robinson, Chair; Stanford, Vice Chair, Operating; Trudeau, Vice Chair, Capital; Frame, Vice Chair, Finance; Gildon, Ranking Member, Operating; Torres, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Cleveland, Conway, Dhingra, Hansen, Hasegawa, Kauffman, Muzzall, Pedersen, Riccelli, Saldaña, Wagoner, Wellman and Wilson, C..

Minority Report: That it be referred without recommendation.

Signed by Senators Dozier, Assistant Ranking Member, Capital; Braun and Warnick.

Staff: Monica Fontaine (786-7341)

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 statute. 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 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 Amended 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:

- the secretary of 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
- 21 members appointed by 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;
- make recommendations to remove barriers to diversion programs, treatment options, and services that would facilitate safe hospital discharges; and
- hold meetings in a virtual format.

Staff support for the task force must be provided by the Washington State Association of Counties. 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.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Adds an additional prosecutor and trial-level criminal defense attorney to the task force.
- Provides that one prosecutor member shall represent those practicing in courts of limited jurisdiction and one prosecutor member shall represent those practicing in superior courts.
- Provides that one trial-level criminal defense attorney member shall represent those practicing in courts of limited jurisdiction and one trial-level criminal defense attorney member shall represent those practicing in superior courts.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Substitute House Bill (Law & Justice):

The committee recommended a different version of the bill than what was heard. PRO:

Laws related to criminal insanity and competency to stand trial have been amended over the last 50 years which has created gaps and inconsistencies. The task force created in this bill will bring stakeholders together to conduct a thorough review of these laws to improve clarity, such as by updating references and changing terminology, examine broader issues with current laws, and make the law more modern and responsive to the needs of those interacting with this system. The Legislature will receive a detailed report that will be prepared by professionals and people who work daily in this area. Additional task force members who have experience in misdemeanors, felonies, and NGRI should be added.

Persons Testifying (Law & Justice): PRO: Representative My-Linh Thai, Prime Sponsor; James McMahan, WA Assoc Sheriffs & Police Chiefs; Judge Michael Finkle, District & Municipal Court Judges' Association; Melissa Johnson, District & Municipal Court Judges' Association; Kari Reardon, WACDL/WDA; Russell Brown, WA Association of Prosecuting Attorneys; Nicole Gomez, Washington Federation of State Employees/Lobbyist; Brad Banks, Washington State Association of Counties (WSAC); Michael Transue, National Alliance on Mental Illness (NAMI).

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on Bill as Amended by Law & Justice (Ways & Means):

PRO: The laws in this chapter were written decades ago and don't reflect the current landscape and problems within forensic mental health. Stakeholders have raised concerns that the entire chapter needs to be reviewed and modernized, not just cleaned up for terminology. This work will improve statutory clarity and address broader issues. This

version of the bill includes all the right participants and recommended changes will be grounded in real world experiences. There are many instances when an individual is not charged and not competent, but doesn't meet the standards for civil commitment. These people continually suffer and this update to the chapter will address that.

Persons Testifying (Ways & Means): PRO: James McMahan, WA Assoc Sheriffs & Police Chiefs; Melissa Johnson, District & Municipal Court Judges Association; Brad Banks, Washington State Association of Counties (WSAC); Russell Brown, WA Association of Prosecuting Attorneys; Nicole Gomez, Washington Federation of State Employees/Lobbyist; Michael Transue, National Alliance on Mental Illness (NAMI).

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.