

SENATE BILL REPORT

SB 5147

As of February 3, 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: Senators Torres, Dhingra, Frame, Harris and Trudeau.

Brief History:

Committee Activity: Law & Justice: 1/20/25, 1/23/25 [DPS-WM].
Ways & Means: 2/03/25.

Brief Summary of First Substitute Bill

- Creates a 24-member task force to review laws related to criminal insanity and competency to stand trial.
- Directs the task force to report its findings and recommendations by December 1, 2026.
- Recodifies sections of law relating to forensic mental health under topical subject headings.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5147 be substituted therefor, and the substitute bill do pass 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: Kevin Black (786-7747)

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.

Staff: Monica Fontaine (786-7341)

Background: Forensic Mental Health. Forensic mental health is a specialized area of mental health occurring at the intersection of mental illness and criminal law, which arises when mental illness is raised as a barrier to holding a person who is a criminal defendant responsible for the alleged criminal activity. The Department of Social and Health Services (DSHS) provides state-funded forensic mental health services to superior courts and courts of limited jurisdiction 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 trier of fact may find a defendant NGRI if, as a result of a mental disease or defect, the defendant was unable to perceive the nature and quality of their action at the time of the offense, or unable to tell right from wrong.

A defendant who is found NGRI may be committed for a period of inpatient treatment at a DSHS facility 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 other than detention for inpatient hospitalization. The term of commitment may not exceed the maximum sentence for the offense for which the defendant was acquitted.

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 defendant may be found incompetent to stand trial if the defendant has a mental disorder that causes them to be incapable of understanding the nature of the proceedings against them or unable to assist in their own defense. 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.

History of Washington Forensic Mental Health Laws. Since 1973, forensic mental health laws in Washington State have been codified in chapter 10.77 RCW. At the time of this chapter's creation, nearly all forensic mental health litigation related to criminal insanity. Half of the 30 sections in the enacting legislation, entitled relating to the criminally insane, were addressed to criminal insanity, while only two sections related to competency to stand trial. Over a half century later, the balance of activity has shifted dramatically. DSHS reports that last year it processed 11,952 service referrals related to competency to stand trial, and only 33 service referrals related to criminal insanity, less than 1 percent of the total. Approximately 30 percent of individuals currently receiving inpatient forensic mental health services in Washington are committed pursuant to a criminal insanity order,

compared to 70 percent committed pursuant to competency to stand trial.

Chapter 10.77 RCW has more than doubled in size since its inception, with 16 sections now devoted to competency to stand trial, 21 sections devoted to criminal insanity, and 24 sections with general application.

Summary of Bill (First Substitute): Creation of Task Force. A task force is created staffed by DSHS to review laws related to criminal insanity and competency to stand trial, and must include the following members:

- the leaders of DSHS, Department of Corrections, Health Care Authority, and Office of Public Defense or their designees;
- the Washington State Attorney General or their designee;
- 15 members to be appointed by DSHS, with input from various agencies, representing the following: superior courts, courts of limited jurisdiction, trial level criminal defense attorneys, law enforcement, victim interests, Disability Rights Washington, the National Alliance on Mental Illness Washington, a Medicaid managed care organization, behavioral health administrative services organizations, county governments, Western State Hospital, and Eastern State Hospital;
- an independent mental health professional with expertise in forensics, to be appointed by DSHS;
- a member designated by plaintiff's counsel in the *Trueblood* lawsuit; and
- three individuals with direct lived experience of the forensic mental health system, to be appointed by DSHS.

The task force must:

- undertake a comprehensive review of chapter 10.77 RCW, to modernize and clean up issues that present barriers to administration, public safety, fairness, efficiency, and comprehension of laws related to criminal insanity and competency to stand trial;
- consider potential terminology and language changes to promote person-centered language, improve coherence between legal and medical terminology, reduce stigma, and improve understanding of the competency evaluation process; and
- make recommendations concerning law changes that would remove barriers to diversion, promote effective treatment, and increase services that would facilitate safe and responsible hospital discharges.

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 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:

- General;
- Authorized Leave and Furloughs;

- Community Notifications;
- Evaluations Under This Chapter;
- Criminal Insanity; and
- Competency to Stand Trial.

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

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes Legislative members from the task force.
- Adds a member to the task force representing behavioral health administrative services organizations and a member designated by plaintiff's counsel in the *Trueblood* lawsuit.

Appropriation: None.

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 Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: Last session our organization brought forward legislation to update terminology related to competency to stand trial, and stakeholders brought us feedback that the entire chapter of laws needed to be modernized and examined. We want to make the laws more responsive to the needs of all stakeholders. This is an important tool for the Legislature to hear from subject matter experts and stakeholders who work with these statutes every day. Since 1973 when these laws were passed, medications are different, our knowledge about mental illness is different, the public views are different, and the public advocacy voice is different. A similar approach was successful recently with the protection order statute. Applying the current statutes to the cases in our local mental health court has been challenging. Frontline courts need direction from the Legislature how to prioritize resources and serve our communities. Please increase task force membership to accommodate all co-counsel for the plaintiffs in the *Trueblood* lawsuit. We have made progress reducing the backlog for competency services, but there is still much work to do. The state should amend the laws to eliminate the gap where someone can be incompetent to stand trial but not meet criteria for civil commitment.

Persons Testifying (Law & Justice): PRO: Senator Nikki Torres, Prime Sponsor; Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense

Lawyers; Melissa Johnson, District & Municipal Court Judges' Association; Judge Michael Finkle, Judge Jessica Giner, District & Municipal Court Judges' Association; Russell Brown, Washington Association of Prosecuting Attorneys; Brad Banks, Washington State Association of Counties & Behavioral Health Administrative Services Organizaitons; Chloe Merino, Disability Rights Washington; Michael Transue, National Alliance on Mental Illness; James McMahan, Washington Association of Sheriffs & Police Chiefs.

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

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: Legislation was introduced last year to change terminology in chapter 10.77 RCW, but during deliberations stakeholders had concerns that the entire chapter should be reviewed. These deliberations helped create this bill. This task force will provide suggestions for legislative considerations and will be more responsive to stakeholder feedback. The fiscal note is too high.

OTHER: The bill needs to include additional members on the task force, including attorneys specializing in felonies and misdemeanors. The fiscal note is too high.

Persons Testifying (Ways & Means): PRO: Melissa Johnson, District & Municipal Court Judges' Association; Michael Transue, National Alliance on Mental Illness (NAMI).

OTHER: Kari Reardon, WACDL/WDA.

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