

# HOUSE BILL REPORT

## HB 1627

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**As Reported by House Committee On:**  
Judiciary  
Appropriations

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

**Brief Description:** Concerning competency to stand trial evaluations.

**Sponsors:** Representatives Morrell, Nealey, Zeiger, Jinkins and Ryu.

**Brief History:**

**Committee Activity:**

Judiciary: 2/19/13, 2/21/13 [DPS];

Appropriations: 2/26/13, 3/1/13 [DP2S(w/o sub JUDI)].

**Brief Summary of Second Substitute Bill**

- Establishes standards for a court to appoint an evaluator to conduct competency evaluations when performance targets for the completion of evaluations are not being met in a county.
- Requires the Department of Social and Health Services (Department), within specifically appropriated amounts, to reimburse the county for the costs of the evaluation in an amount equivalent to the cost of evaluations conducted by the Department.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jinkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

**Staff:** Edie Adams (786-7180).

**Background:**

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*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.*

In a criminal case, a court may require an evaluation of a defendant who may be incompetent to stand trial. A person who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. A person is incompetent 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.

#### Competency Evaluations.

When a criminal defendant's competency is in question, the court must appoint, or ask the Department of Social and Health Services (Department) to designate, a qualified expert or professional person to evaluate and report on the defendant's mental condition. The evaluator must be approved by the prosecuting attorney. The evaluator must assess the defendant in a jail, detention facility, the community, or the court, to determine whether an inpatient commitment is needed to complete an accurate evaluation. If an inpatient commitment is not necessary, the evaluator will complete the evaluation.

A court may commit a defendant for evaluation without an assessment if: (1) the defendant is charged with Murder in the first or second degree; (2) the court finds that a jail evaluation will be inadequate for an accurate evaluation; or (3) the court finds that an evaluation outside the jail is necessary for the health, safety, or welfare of the defendant.

#### Performance Targets.

In 2012 the Legislature established performance targets for the timely completion of competency evaluations. By November 1, 2012, competency evaluations for defendants in jail should be completed within seven days, and a defendant ordered to an inpatient evaluation should be admitted to a state hospital within seven days. By May 1, 2013, competency evaluations in the community for defendants released from custody should be completed within 21 days.

The Legislature recognized that these targets may not be achievable in all cases, but directed the Department to manage and allocate resources in order to meet these targets whenever possible without compromising the quality of competency evaluations. Beginning December 2013, the Department must annually report on the timeliness of competency services. The Department must also report quarterly any instances where performance targets are not met and the corrective action taken to improve performance.

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#### **Summary of Substitute Bill:**

In any six-month time period where the state hospital has not met the performance targets for competency evaluations in 50 percent of the cases submitted by any one county, the court may appoint a qualified expert or professional person approved by the prosecutor and the defense attorney to evaluate and report on the defendant's mental condition. The expert or professional person must be appointed from a list assembled with input from the prosecuting attorney and defense bar. The prosecuting attorney, in deciding whether to approve appointment of the expert, may consider whether an evaluation in the jail will be inadequate.

A qualified expert or professional person appointed for an indigent person should be compensated in an amount that will encourage in-depth evaluation reports. The Department must reimburse the county for the costs of the qualified expert or professional person appointed for an indigent person in an amount determined to be fair and reasonable by the Department, and that is at least equivalent to the amount for evaluations conducted by the Department.

The act expires June 30, 2016.

**Substitute Bill Compared to Original Bill:**

The original bill provided that the court is responsible for ensuring the timely completion of accurate and reliable evaluations in accordance with the performance standards. The original bill did not require appointment of evaluators from a list and did not require defense attorney approval of the appointed evaluator. The original bill also did not state that evaluators should be compensated in an amount that will encourage in-depth evaluation reports, and that reimbursement by the Department must be in an amount that is at least equivalent to the amount for state hospital evaluators. The original did not contain an expiration date for the act.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 22, 2013.

**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 public is asking the Legislature to focus on the issue of criminal defendants with mental illness. Too many people with serious mental illness are languishing in jails for months at a time waiting for competency evaluations. Sometimes they spend more time in jail than if they had been convicted of the charges. Jails are not equipped to be mental health providers, so these people tend to decompensate in a jail setting. The bill creates a stop gap measure to complete evaluations sooner.

Pierce County is experiencing a mental health crisis. We have 80 to 90 individuals in jail on any given day who are receiving medication for mental illness. The state has fallen behind in providing evaluations and now there is a huge backlog. The number of requests for evaluations has increased by over 80 percent since 2001. The Department cannot meet the targets without assistance. Independent evaluations are already done, so there is an existing pool of independent qualified experts who will be available to do these evaluations. The counties would cover the evaluation costs above what the Department pays. All counties will benefit from reducing the backlog, even though not all counties will financially be able to take advantage of the bill.

The bill should make it clear that the evaluations should be quality evaluations. Both the defense attorney and the prosecutor should have input in choosing the evaluator to ensure objective evaluations.

(With concerns) The Department has had many discussions with Pierce County on this bill. The issue is a fiscal one. The Department receives 225 referrals per month from the courts. The Department is close to being fully staffed, but they have a 270 case backlog, and a demand for evaluations that is continuing to grow.

(Opposed) The current crisis is a symptom of shutting down wards and decreased capacity at the state hospitals. We currently have only four evaluators to conduct jail evaluations. A main concern is that the bill is contracting out state jobs to independent evaluators. We cannot support a bill that contracts out state psychologist work without acknowledging that this is a funding issue.

**Persons Testifying:** (In support) Representative Morrell, prime sponsor; Pat McCarthy, Pierce County Executive; Paul Pastor, Pierce County Sheriffs; David Lord, Disability Rights of Washington; Al Rose, Pierce County Director of Justice; Stephen Penner, Pierce County Prosecutors Office; and Brian Enslow, Washington State Association of Counties.

(With concerns) Jane Beyers, Department of Social and Health Services.

(Opposed) Matt Zuvich, Washington Federation of State Employees.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 27 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Dahlquist, Dunshee, Fagan, Haigh, Harris, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Morrell, Parker, Pedersen, Pettigrew, Pike, Ross, Seaquist, Springer and Sullivan.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Green, Haler, Schmick and Taylor.

**Staff:** Andy Toulon (786-7178).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:**

The determination of whether the state hospital is meeting performance targets for timely completion of competency evaluations is through quarterly reports which are currently required in statute RCW 10.77.068(3). For cases in which the court chooses to appoint a non-Department of Social and Health Services evaluator because the Department of Social

and Health Services (Department) is not meeting timelines, the Department is only required to reimburse a county subject to the availability of amounts specifically appropriated for that purpose. The county is responsible for costs of evaluations which exceed the amount reimbursed by the Department. The county must maintain data on the timeliness of these evaluations.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 2, 2013.

**Effective Date of Second 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) There are lots of costs involved with keeping people in jail while they are waiting for an evaluation. This bill works to make sure these people get out and with Medicaid expansion they can get mental health treatment.

There are two mental hospitals in Pierce County, one is Western State and the other is the Pierce County jail. On any given day, 80 to 90 people in the jail are on anti-psychotic medications.

According to the Joint Legislative Audit Review Committee (JLARC), the number of forensic evaluations has gone up by 81 percent since 2001. In Pierce County, the number of evaluations done in jail has doubled from 2010 to 2011. The JLARC study indicates that about 54 percent of evaluations in western Washington are done in the jails. Approximately 58 percent of these evaluations are for individuals accused of misdemeanor crimes. The fiscal note indicates that if the Department had a full complement of evaluators, they would need 13.5 months to get through the backlog of 270 cases. The cost for local government has fluctuated. Between January and July of 2008, there were 3,300 bed days for people waiting for competency evaluations and restoration. In 2012 that was 5,100 bed days for the same period.

The cost estimate for the original fiscal note is overstated, as it estimates costs for 100 percent of the evaluations in the community, but the substitute bill makes this optional. In addition, Pierce County believes this option will only be used for in-custody evaluations which comprise just over half of the cases in the county. Further, as the backlog is reduced, the number of potential community evaluations should decline even further. Community evaluation costs should also be offset by savings associated with state hospital vacancies which are driving the backlog. For Pierce County, current in-custody evaluations are taking 25 days and, if this was reduced to the target of seven days, it would reduce the length of stay for these individuals by 18 days resulting in significant local government savings that are not captured in the fiscal note.

There is a fiscal impact but it is not really shown because there is a cost that people with disabilities suffer spending time waiting in jails for these evaluations. In 2006 there was almost a lawsuit over these issues. The Legislature should take action now to reduce the

backlog of delays and ensure there are adequate evaluators to timely evaluate people so they do not spend time in jail decompensating and suffering further injury while the state incurs further liability.

This bill is permissive and while not all counties may take advantage of the opportunities presented by the bill, all counties will benefit from the reduced backlog. People are waiting in jails across the state and this is a great mechanism to get the backlog down across the state.

(With concerns) The changes that were made in the policy committee helped to reduce the fiscal impact on the state. There are two remaining issues we would like to see changed. First, a quarterly report already required in law to monitor compliance with timelines should be the trigger so there will not be a need to do something completely new. Second, if the private evaluator charge is greater than what it would cost the state to do the evaluation, the county should be responsible for the difference in the costs.

(Opposed) None.

**Persons Testifying:** (In support) Representative Morrell, prime sponsor; Al Rose and Gary Robinson, Pierce County; David Lord, Disability Rights of Washington; and Brian Enslow, Washington State Association of Counties.

(With concerns) Jane Beyer, Department of Social and Health Services.

**Persons Signed In To Testify But Not Testifying:** None.