

This bill draft was originally based on the work of a task force convened by the Mental Health Division in 2007 in King County. The task force was facilitated by Dr. Joel Dvoskin, and included participation by judges, prosecutors, defense attorneys, RSN staff, DMHPs, disability rights advocates, medical professionals from Eastern and Western State Hospital, and the Mental Health Division. The aim of the task force was to reduce the waiting period for in-custody competency evaluations and competency restoration, thereby reducing the number of jail days consumed by defendants with mental illnesses, without compromising the quality or integrity of competency evaluation reports.

In the 2008 legislative session, Senator Jim Hargrove sponsored Senate Bill 6311, based on the work of the task force. After several meetings and discussions, it was agreed to table the bill for 2008 so that a thorough discussion could take place with stakeholders around the state before reintroduction of the bill in 2009.

The current draft has changed somewhat based on feedback received during the 2008 session. A summary of the draft bill's contents is below.

#### Changes to Competency Evaluation Procedures

Several changes streamline the competency evaluation process. The draft specifies that a competency evaluation will be conducted by one evaluator designated by the state, unless all parties agree to the appointment of an alternate evaluator. If the defendant is in custody, the evaluation will take place in the jail unless the evaluator determines that it is necessary to admit the defendant to the hospital in order to complete the evaluation. If the defendant is charged with a class A felony, the court may directly order the defendant to be evaluated in the hospital without a determination of clinical necessity.

The state will no longer automatically provide insanity and diminished capacity evaluations in conjunction with a competency evaluation. An insanity evaluation will be performed if the defendant gives notice of his or her intention to rely on an insanity defense. A diminished capacity evaluation will be performed if the defendant gives notice of his or her intention to rely on a diminished capacity defense and endorses an expert witness who will testify in support of the defense. Either evaluation will require a separate order to be signed by the court.

A timeline is provided in order to hold the state accountable for timely completion of the competency evaluation reports. The report of an evaluation which occurs in the jail must be completed within 21 days of receipt of the order and accompanying documents. The report of an evaluation which occurs in the hospital must be completed within 30 days of the determination or order that the defendant must be admitted to the hospital.

#### Changes to Competency Evaluation Reports

The competency evaluation report will include 1) description of the evaluation, 2) diagnosis of the defendant, 3) an opinion as to competency, and 4) an opinion as to whether the defendant should be evaluated by a designated mental health professional (DMHP). The report will not include an opinion as to whether the defendant will present a substantial danger to other persons after release from custody.

### Changes to Competency Restoration Procedures<sup>1</sup>

If a felony defendant remains incompetent after 90 days of restoration treatment, and further treatment would cause the defendant to be held in custody longer than the top of his or her standard range if convicted, the court will consider the nature of the allegations, the defendant's criminal history, and the public interest to be served by further restoration treatment before ordering a second 90 day restoration period.

The court will not order a third 180 day restoration period for a felony defendant if the charge is not for a "serious" crime as defined by RCW 10.77.092. A serious crime is a violent offense, sex offense, serious traffic offense, most serious offense, crime against a person, domestic violence offense, harassment offense, class B drug offense, or any crime which the court determines to be serious after considering factors related to criminal history, number of charges, and impact of the case on the victim or the safety of the public.

A defendant with multiple charges can receive restoration treatment on all of the charges for the maximum length of time that applies to any of the charges.

### Miscellaneous Changes

Statements made by the defendant during a competency evaluation or competency restoration will not be admissible in the state's case in chief. Such statements will be admissible after the state's case in chief if the defendant raises a mental defense or in any event to impeach testimony by the defendant.

A jail is not responsible for the failure of the state to admit a defendant into the hospital within a reasonable time, and may seek an order to compel and recover costs and other penalties.

### Record Reporting

The Mental Health Division will report annually to the Legislature concerning the length of the waiting period for competency evaluations and competency restoration. The report will be itemized by state hospital and by county. The report will include the number of evaluations by different types, the success rate of competency restoration, and the amount of any sanctions paid due to delay caused by competency proceedings.

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<sup>1</sup> SB 6311 provided deadlines for how long an incompetent defendant could be held in custody prior to transport to the state hospital after his or her criminal case was dismissed. These provisions were controversial and have been deleted from the draft.