

**From:** Tom McBride [tmcbride@waprosecutors.org]  
**Sent:** Tuesday, September 09, 2008 1:01 PM  
**To:** Jean Soliz Conklin  
**Cc:** Hauge, Russ (Kitsap Co); DBoerner@SeattleU.edu; Boerner@hughes.net  
**Subject:** Re: Competency Bill  
 Jean - in case it didn't make it before...  
 Tom

Dave and Jean - I believe that the Sentencing Guidelines Commission will be considering the latest version of SB 6311 (from the 2008 Legislative Session), which addresses competency restoration in the criminal justice system. This was a controversial proposal last year, and while certainly improved may still contain issues that deserve scrutiny. If you could distribute this email to the members, I encourage the following issues to be discussed during your deliberations.

Thank you  
 Tom McBride  
 Washington Association of Prosecuting Attorneys

---

First, the draft eliminates the statutory requirement for two evaluators of competency and requires the evaluation to occur within the jail (except the court may order the evaluation to occur at Eastern or Western State Hospital on class A felonies). The current statute allows the the parties to waive the requirement of two evaluators, and allows the parties to agree that the evaluation can take place in the jail. It is my belief that most evaluations do take place in the jail, using a single evaluator, under the current law.

- This change will mandate that result in the remaining cases where the parties found reason not to agree with an in-jail and/or single person evaluation.
- It seems that this mandate addresses a resource limitation at the expense of individual discretion exercised on a case by case basis that a more comprehensive evaluation at ESH or WSH is needed.
- What relief is available a jail where the evaluator does not arrive for weeks, and we are housing someone inappropriate for the jail setting and population?

**Should there be some court discretion to override location in appropriate cases (some class B felonies are serious cases)?**

Second, the draft also eliminates any say by the state in who conducts the evaluation. We have had evaluators with less than one year of experience assigned to murder cases, and there are some evaluators that have greater or lesser ability to accurately communicate with a jury. What if we seek an second opinion?

**Should there be some court discretion to override who evaluates in appropriate cases?**

Third, the draft eliminates the court's authority to request an opinion as to the person's dangerousness.  
 Fourth, the draft also eliminates competency restoration for non serious non felonies.

We understand that eliminating a dangerousness assessment will save time, but won't it be necessary, particularly in the context of this draft that restricts competency restoration for non/serious non/felonies. At least, shouldn't the evaluator in low level cases no longer subject to competency restoration opine as to danger to others?

The entire system was changed several years back to allow for competency restoration on low level misdemeanants based upon risk.

**Should there be some court discretion to restore competency on low level misdemeanants?**  
**Should there be some court discretion to request an opinon on dangerousness to others?**