

HB 2031: Competency to stand trial evaluations

We support efforts to improve the evaluation process for those charged with crimes; however, we have serious concerns with Section 2 of HB 2301. This section is impractical and we believe will not provide relief to the Department of Social and Health Services (DSHS). The stated idea that DSHS would announce the length of delays and report that information to counties is a good thing that will help trial lawyers so they can report to the court the expected length of the delay. However, practically speaking, this bill is unlikely to have a significant impact on backlogs especially if payment rates are not increased for these cases.

The problem: DSHS is trying to create a panel of agreed community evaluators who can do in-custody evaluations and be compensated when DSHS is out of compliance with the timeline for competency evaluations as listed in RCW 10.77.068 and the ruling in *A.B. by Trueblood v D.S.H.S.* In principle, this is a great idea, but under the current system evaluators are severely underpaid disincentivizing participation on conflict panels. Additionally, in most jurisdictions, it is unlikely that prosecutors and the defense will agree upon a panel of experts.

- 1) **DSHS sets the payment schedule and payment is too low to recruit evaluators.** Payment is so low that no sole proprietor can work at that rate and still pay their overhead. The last time the legislature amended RCW 10.77.073, they inserted the same language used in section 2 of this bill, which is that the prosecutor and defense attorney can agree on evaluators. It also uses the same language when it references the salary of someone doing the evaluations employed by DSHS. As long as DSHS is dictating the reimbursement rate and as long as that rate is an under-market rate, it is unlikely that this will result in a panel of evaluators who can provide relief when there is a backlog of in-custody competency evaluations. While the Washington Administrative Code for reimbursement recently was amended, DSHS continues to establish the rate and refuses to engage in fair market compensation. Several jurisdictions, including Snohomish County, attempted to establish panels in the past and were unsuccessful due to the low rate.
- 2) **Assuming there were evaluators willing to accept lower payment, in most jurisdictions, the defense and the prosecutor rarely will agree on an evaluator. The courtroom is an adversarial arena and this bill assumes that the prosecutor and defense attorney will jeopardize their ethically required roles to help solve DSHS's backlog.** Neither party should have to agree to an evaluator. The State provides their evaluator employed by DSHS; the defense hires their own expert at public expense (and at the market rate). If you ask a prosecutor to pick the evaluator, they're unlikely to pick one who frequently finds individuals not competent. And conversely, the defense attorney is unlikely to consent to an evaluator who rarely finds lack of competence. This model didn't work when DSHS amended 10.77.073 a few years ago and it is unlikely to work now.
- 3) **This bill does not solve the problem with the backlog in admissions to psychiatric facilities.** Evaluations are generally happening with the timeframes established in *Trueblood* and RCW 10.77.068. More problematic is the number of cases in which a defendant is found not

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competent and treatment is not provided in a timely manner. It does little to address the overall problem, when the ongoing issue is admission to the hospital.

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