

**Competency to  
Stand Trial,  
Phase I:  
Staff Productivity  
Standards, Data  
Reliability, and Other  
Parties' Actions May  
Impact DSHS's Ability  
to Meet Timelines**

**Briefing Report**

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STATE OF WASHINGTON  
JOINT LEGISLATIVE AUDIT AND  
REVIEW COMMITTEE

**STUDY TEAM**  
Eric Thomas  
Elisabeth Donner  
Zane Potter

**PROJECT SUPERVISOR**  
Valerie Whitener

**LEGISLATIVE AUDITOR**  
Keenan Konopaski

Copies of Final Reports and Digests are  
available on the JLARC website at:

**[www.jlarc.leg.wa.gov](http://www.jlarc.leg.wa.gov)**

or contact

Joint Legislative Audit & Review Committee  
1300 Quince St SE  
Olympia, WA 98504-0910  
(360) 786-5171  
(360) 786-5180 FAX

## REPORT SUMMARY

### **Competency Evaluations Are Intended to Prevent Prosecution of Mentally Incompetent Defendants**

The U.S. Supreme Court has held that a criminal defendant is incompetent to stand trial if the defendant does not have the capacity to understand the proceedings against him or her or does not have sufficient ability to assist in his or her own defense (*Dusky v. United States*, 362 U.S. 402 (1960)). Washington State statute also prohibits an incompetent person from being “tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues” (RCW 10.77.050).

If the defendant’s competency is raised as an issue in a criminal or civil case, the court is required to suspend the trial so that the defendant’s competency to stand trial can be evaluated.

Evaluations are usually performed by psychologists from DSHS’s Western State Hospital or Eastern State Hospital. Based on the evaluation, the court may determine either that the defendant is incompetent to stand trial and order a period for competency restoration, or that the defendant is competent and resume the trial.

### **DSHS Has New Requirements for Completing Competency Evaluations**

According to DSHS, the number of court referrals for competency evaluations has increased by 82 percent since 2001, reaching 3,035 referrals in Calendar Year 2011. This has raised concerns about the amount of time defendants spend waiting in jails or in the community for an evaluation.

In 2012, the Legislature passed Substitute Senate Bill 6492 to “substantially improve the timeliness of services related to competency to stand trial.” The bill established performance targets for the timeliness of competency evaluations and requires JLARC to complete two performance assessments of DSHS’s timeliness in completing competency evaluations.

The legislation directs DSHS to meet two targets by November 2012 and another by November 2013. Given the recent passage of these new target requirements, information on meeting the

targets is not available. JLARC's first report focuses on DSHS's plans to meet these new requirements. At this preliminary stage of implementation, DSHS reports that it has plans in place to address these new statutory requirements and related challenges identified by JLARC staff (see Appendix 3)

## **Staff Productivity Standards and Data Reliability Are Two Issues of Concern in DSHS's Early Implementation**

In this first of the two studies, JLARC wants to make legislators aware of two issues we found in early implementation of the bill:

- Based on our review of data provided by DSHS, we estimate that the two state hospitals did not meet the assumed staffing and productivity standards in the first three months of implementation of the legislation (May – July 2012). Meeting these assumptions is key to DSHS meeting the statutory timelines for completion of competency evaluations. DSHS has prepared a plan intended to address staffing and productivity.
- JLARC's request for data on early implementation revealed data reliability issues. If DSHS does not address these data reliability issues, it will impact the agency's ability to report on its progress and JLARC's ability to complete its second study. DSHS recognizes that the state hospitals need to improve data quality.

## **A Third Issue: Competency Evaluations Involve More Than the State Hospitals, and These Parties' Actions Can Delay Evaluations**

State hospitals, county courts and jails, attorneys, and the defendants themselves all have a role in the timely completion of competency evaluations. The cooperation and availability of each of the parties are needed for DSHS to meet the statutory timelines. Some of the potential causes of delay are beyond DSHS's control. The agency reports that it plans to track causes of delay in the completion of competency evaluations.

## **JLARC Next Steps**

JLARC has a second assignment from the Legislature to report on DSHS's timeliness in completing competency evaluations. In early 2013, JLARC will present a Scope and Objectives for the second study. What we learned in this report and in DSHS's implementation plan in Appendix 3 will inform this second study. DSHS's response to this report is also included in Appendix 2. The second study is due in December 2013.