

## COMPETENCY TO STAND TRIAL – AUDIT 1 OF 2

### PROPOSED SCOPE AND OBJECTIVES

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STATE OF WASHINGTON  
JOINT LEGISLATIVE AUDIT  
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## What Is an Evaluation for Competency to Stand Trial?

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 staff from the Department of Social and Health Services (DSHS) can evaluate the defendant’s competency to stand trial. These evaluations may be performed in one of the state’s two mental hospitals operated by DSHS, in county jails, or in the community for out-of-custody defendants. 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.

## Why a JLARC Study of the Timeliness in Completing Competency Evaluations?

According to a report prepared by Senate Human Services Committee staff, the number of court referrals for competency evaluations increased 82 percent between 2000 and 2011. By 2011, DSHS received a combined 3,035 court referrals for initial competency evaluations for adult defendants. The report found that the increase in referrals has been accompanied by an increase in the amount of time defendants spend awaiting evaluation in state hospitals, jails, and in the community.

In 2012, the Legislature passed Substitute Senate Bill 6492, which is intended to “substantially improve the timeliness of services related to competency to stand trial” and establishes performance targets for the timeliness of competency evaluations. This bill also directs JLARC to complete two performance assessments, six and eighteen months after the bill’s effective date, of the agency’s timeliness in completing competency evaluations.

## Legislature Directs DSHS to Improve Timeliness

The Legislature requires three key tasks of the Department of Social and Health Services:

- 1) **Report progress meeting timelines established in the bill for completing competency evaluations:** The bill establishes targets for the completion of performance evaluations in jails, state hospitals, and in the community and provides exceptions for why targets may not be met.

DSHS must provide annual performance reports. In any quarter in which DSHS fails to meet a performance target, the agency must report on the extent of the deviation and the corrective action the agency is taking;

- 2) **Establish productivity standards for DSHS staff that perform competency evaluations;** and
- 3) **Monitor defendants' time in state hospitals and reduce the length of stay related to evaluation and competency restoration:** DSHS is to monitor whether defendants' clinical objectives have been met so they can be discharged before their commitment period expires. Additionally, DSHS is to assess the extent to which patients overstay statutory limits in state hospitals and to take steps to limit commitment times.

## Study Scope

This is the first of two JLARC audits of DSHS' timeliness in completing competency evaluations. This first audit will review what steps DSHS is taking to meet the performance targets and deliver the information required in statute. This work will inform the objectives for JLARC's second audit due in December 2013.

## Study Objective

The study will report on the steps DSHS is planning to take to accomplish the three tasks identified above. Specifically, JLARC will review how DSHS has or plans to:

- 1) Meet timelines established in statute for completing competency evaluations and reporting the agency's performance;
- 2) Establish quality and productivity standards for DSHS staff who perform competency evaluations and determine how these standards will be used; and
- 3) Monitor defendants' lengths of stay in state hospitals related to evaluation and competency restoration and facilitate their discharge in a timely manner.

## Timeframe for the Study

Staff will present this report at the JLARC meeting in December 2012. This will be followed by a more detailed Scope and Objectives for the second phase of this study due in December 2013.

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