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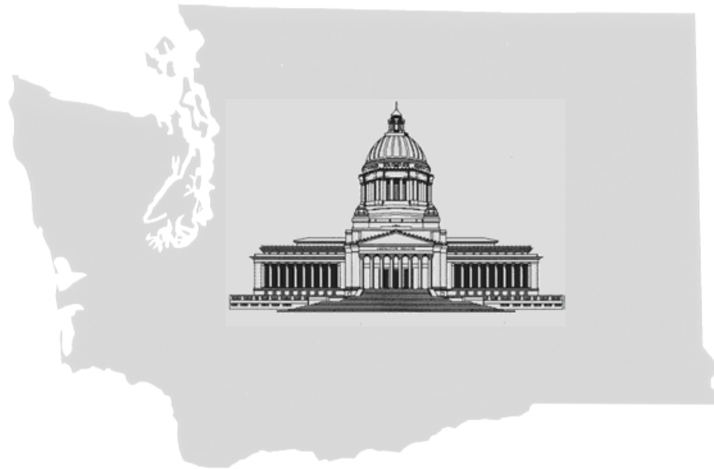

MENTALLY ILL OFFENDERS: STUDY OF THE IMPACT OF 2SSB 6214

Report 00-9

December 13, 2000

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MENTALLY ILL OFFENDERS: STUDY OF THE IMPACT OF 2SSB 6214

REPORT 00-9

REPORT DIGEST

DECEMBER 13, 2000

STATE OF WASHINGTON

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MENTALLY ILL OFFENDERS: STUDY OF THE IMPACT OF SB 6214*

Overview: This mandated study examines the impact of SB 6214, a measure passed in 1998 in response to the fatal stabbing of a retired Seattle firefighter outside the Kingdome by an individual with a history of violent acts, misdemeanor arrests, and civil commitments. The Act made changes to the state's civil commitment and criminal competency laws to help make a seamless transition between the mental health and criminal justice systems. To date, it is seen as having had a generally positive, but somewhat limited, effect on achieving its goals.

Background: Key features of the Act include:

- Definitional and other changes that place greater emphasis on an individual's current and past history of violence when determining whether the person should be subject to a civil commitment; and;
- A new requirement that certain persons charged with non-felony crimes, who have been found incompetent to stand trial, be committed for up to 14 days of "competency restoration." And requiring further that, if competency is still not restored, the person be evaluated for possible ***civil*** commitment prior to being released.

Is The Act Generally Working As Intended?

Misdemeanant Criminal Competency Related Changes: These provisions became effective in March 1999, and the impacts have been varied. Key findings in this area include:

- Misdemeanant competency *evaluations* conducted by the state hospitals have increased substantially in response to changes made by SB 6214. This increase has been problematic at Eastern State Hospital, where there is a backlog of people waiting to be admitted for evaluation.
- The number of misdemeanant criminal competency restoration *commitments* has been far less than originally projected: 121 in the first year, compared to a projected number of 657.
- In most cases (58 percent), those commitments do not result in the restoration of competency. Many professionals claim the 14-day period is inadequate for this purpose.
- Prior to SB 6214, persons charged with misdemeanors and found incompetent to stand trial typically had their charges dismissed, and were then released back into the community. Under SB 6214, 42 percent of such persons have been returned to competency following a restoration commitment, and 35 percent have been civilly committed.

* Second Substitute Bill 6214, Chapter 297, Laws of 1998, cited in this report as SB 6214 or "The Act."

- Though not a typical view, one large RSN perceives SB 6214's provisions as interfering with processes it previously had established on its own. In their opinion, this sometimes leads to reduced treatment effectiveness in that RSN.

Civil Commitment Related Changes: The Act's civil commitment changes became effective in July 1998. Civil commitments have increased since that date, however, it is unclear how much of the increase–if any–can be attributed to SB 6214. In most instances, County Designated Mental Health +Professionals (CDMHPs) within the counties that experienced the largest increases report that the Act has likely had *some* impact, but not a major one. State hospital staff report it has not had a major impact on increasing their level of civil commitments.

Other civil-related issues include:

- Many mental health professionals report they are unsure how to access criminal history information, so they are unable to fully comply with the requirement to review such information when conducting a civil commitment evaluation.
- There are indications that CDMHPs may not always be complying with requirements to detain persons on "conditional release" who are not complying with their release terms, or whose mental condition has deteriorated.

How Are Various Entities Impacted By The Act?

We examined the Act's impact on the state hospitals, CDMHPs, the Regional Support Network (RSNs), local courts and prosecutors, community providers, and local jails. Although there are some important exceptions, ***in general***, the Act has not had a major impact on the workload of these entities.

Are The Act's Goals Being Achieved?

Among groups we surveyed, most responded that SB 6214 has been at least "somewhat effective" in: 1) improving communication and information sharing between the criminal justice and mental health systems, and 2) providing additional and appropriate treatment for misdemeanants who may represent a threat to themselves or the public.

In general, the consensus view is that SB 6214 has had a positive, but limited effect. This may be attributable to a fairly widespread unfamiliarity with the Act's provisions.

Recommendations

Recommendations are related to:

- Reviewing Eastern State Hospital's practices related to conducting criminal competency evaluations.
- Modifying the statutory requirement that all criminal competency evaluations be conducted by two mental health professionals.
- Giving consideration to increasing the maximum duration of misdemeanant competency restoration commitments.
- Disseminating information to mental health professionals on how to access past criminal history information.
- Ensuring that CDMHPs and community treatment providers are properly informed about their roles and responsibilities under the Act's conditional release provisions.
- Ensuring that all pertinent mental health and criminal justice entities are provided relevant information on the Act's provisions.

TABLE OF CONTENTS

Background		1
Part 1	Is The Act Working As Intended?	2
Part 2	How Are Various Entities Impacted By The Act?	15
Part 3	Concluding Discussion: Are The Act's Goals Being Achieved?	20
Agency Responses		21
Acknowledgements		21
Summary of Recommendations		22
Appendices		
1	Scope and Objectives	23
2	Agency Responses	25
3	Surveys of Entities Impacted by SB 6214	35
4	Outcomes of Misdemeanant Competency Restoration Commitments	37

BACKGROUND

This statutorily mandated study examines the general impact of 2SSB 6214, from the 1998 Legislative Session (Chapter 297, Laws of 1998). This bill was passed in response to the tragic fatal stabbing of a retired City of Seattle firefighter outside the Kingdome by an individual with a history of violent acts, misdemeanor arrests, and civil commitments. The attacker had been released from jail only days before, after having been found incompetent to stand trial on a misdemeanor charge.

In response to this tragedy, a special King County Task Force on Mentally Ill Offenders was created to address commitment issues related to mentally ill misdemeanant offenders. Many of that Task Force's recommendations were incorporated into 2SSB 6214.[1]

The Act made numerous changes to the state's civil commitment and criminal insanity laws, to help make a seamless transition between the mental health and criminal justice systems.

- The civil commitment statutes govern the system that exists to *involuntarily* detain and provide treatment to individuals who, as a result of a mental disorder, are determined to be gravely disabled or to present a likelihood of serious harm to themselves or others. Criminal behavior is ***not*** required for someone to be subject to these statutes.
- The criminal competency statutes govern the process related to persons who have been charged with a crime, but because of a "mental disease or defect," lack the capacity to understand the nature of the criminal proceedings against them, or to assist in their own defense.[2] The law prohibits anyone who is incompetent from being "tried, convicted, or sentenced" for an offense as long as their incapacity continues.

The scope of the changes made by SB 6214 to these two systems is described more fully later in this report, but two particularly key features include:

- Definitional and other changes that place greater emphasis on a person's current and past history of violence when determining whether they should be civilly committed; and
- A new requirement that high-risk persons charged with non-felony crimes, who have been found incompetent to stand trial, be committed for a period of "competency restoration."

THIS STUDY

Section 61 of SB 6214 directs the Joint Legislative Audit and Review Committee (JLARC) to "conduct an evaluation of the efficiency and effectiveness of [the] act in meeting its stated goals." The study is required to assess how the Act has impacted the state mental hospitals, the regional support networks, and "any other appropriate entity." Consistent with this direction, this study reviews activities and operations related to implementation of the Act. Particular attention is focused on reviewing the status of implementation efforts, assessing the impact of the Act on key portions of the mental health and criminal justice systems, and on identifying operational problem areas.

In conducting this study, JLARC staff reviewed data from various parts of the mental health and criminal justice systems.

[1] For ease, 2SSB 6214 – which stands for Second Substitute Senate Bill 6214 – is referred to in the remainder of this report as either "The Act," or "SB 6214."

[2] *Incompetency* refers to a person's mental condition at the present moment, for example, at the time of trial. It is distinguished from *insanity*, which refers to a person's mental condition at the time an alleged offense was committed.

We also conducted numerous interviews, and surveyed a wide range of entities to assess how they have been affected by the Act, and to elicit concerns or perceptions of any problems related to the Act's implementation. These surveys are described in more detail in Appendix 3.

This study is just one of two mandated by the Act. The Washington State Institute for Public Policy is also conducting an evaluation of the Act–their final report is due in November 2003. The two studies are very distinct. This JLARC study is an operational review that focuses on short-term issues such as how the Act is impacting various entities and on identifying problem areas in the short term. In contrast, the Institute's evaluation is directed toward longer-term impacts, such as whether the Act is contributing to a reduction in repeat instances of involuntary civil commitments or criminal behavior.

REPORT ORGANIZATION

The remainder of this report is divided into three main sections:

- Part 1: Is The Act Generally Working As Intended? (This section also provides an overview of the changes made by SB 6214 and identifies various problem areas.)
- Part 2: How Are Various Entities Impacted By The Act? and
- Part 3: Concluding Discussion: Are The Act's Goals Being Achieved?

PART 1: IS THE ACT WORKING AS INTENDED?

SB 6214 made numerous changes to both the state's civil commitment laws (Chapter 71.05 RCW), and its criminal competency and insanity statutes (Chapter 10.77 RCW), to provide for a seamless transition between the mental health and criminal justice systems. Beginning on the criminal competency side, this section gives an overview of the key changes and examines how they have been implemented so far.

CRIMINAL COMPETENCY CHANGES

Overview of Major Changes

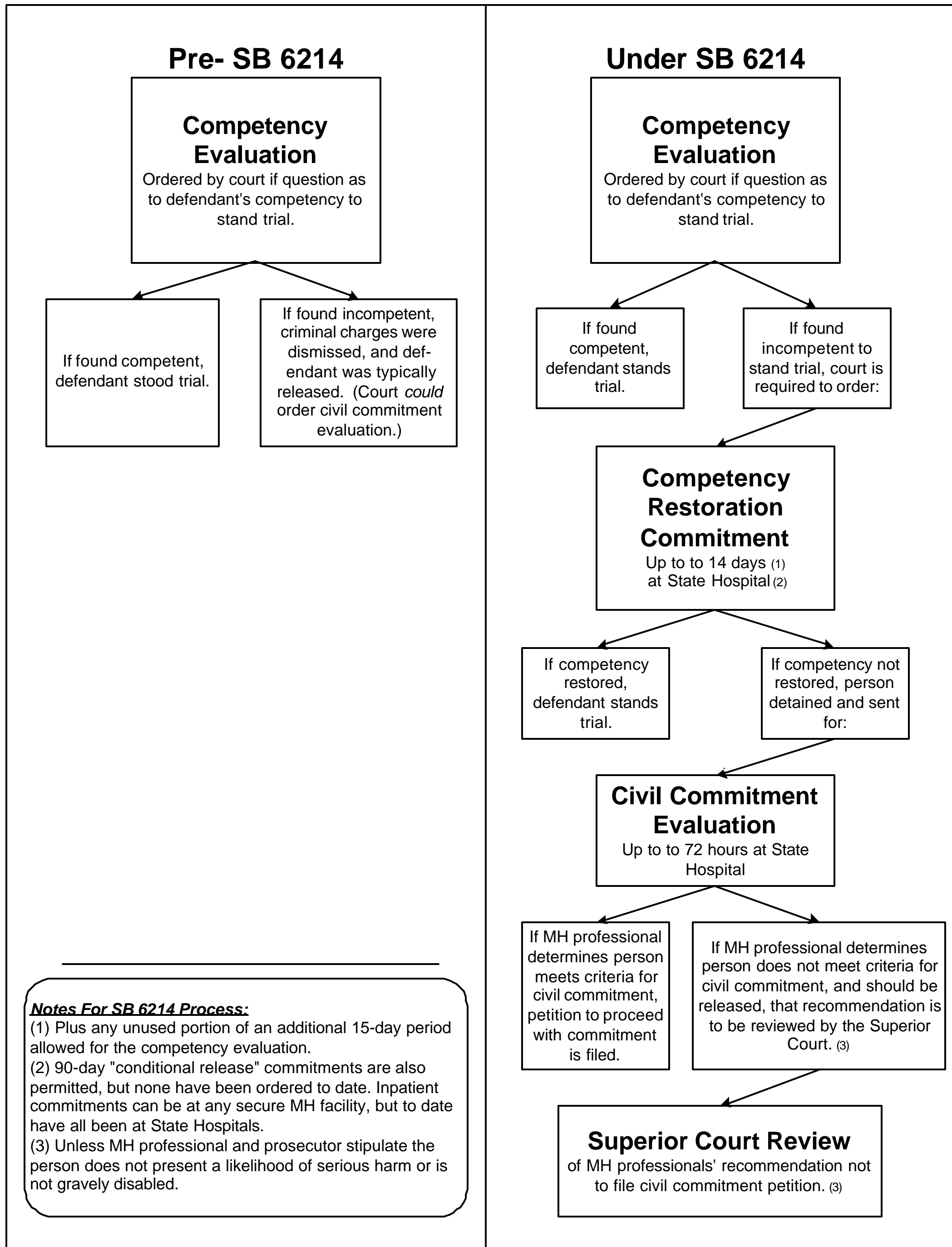
Many of SB 6214's most significant provisions are directed toward the state's criminal competency statutes and processes, particularly those affecting persons charged with non-felony crimes. Non-felony crimes include misdemeanors and gross misdemeanors, and range from comparatively minor offenses to such crimes as assault in the fourth degree. (Felonies are more serious crimes such as murder, rape, robbery, and burglary.)

A major focus of SB 6214 is on filling any "cracks" that exist between the criminal justice and mental health systems. The concern is that such cracks could allow someone with a known history of violence, who has entered the criminal justice system, to be released without either evaluation or judicial review of their need for involuntary mental health treatment.

Exhibit 1 on the following page is a flowchart that provides an overview of the process established by SB 6214, and how it contrasts with what existed before. The

Exhibit 1
Simplified Flow of SB 6214's Criminal Competency Provisions For Non-Felony Offenders

Important Note: SB 6214's provisions, noted below, apply to individuals who have been charged with a non-felony crime (such as Fourth Degree Assault), and have either 1) a history or pending charge of one or more violent acts; or 2) been previously acquitted by reason of insanity or found incompetent to stand trial on an alleged offense involving physical harm to a person.



Source: JLARC staff.

most significant change is the establishment of a new requirement for ***competency restoration commitments,*** for high-risk individuals charged with non-felony crimes who are found incompetent to stand trial. Prior to SB 6214, such individuals would typically just have their criminal charges dismissed, and then they would simply be released back into the community.[3] Key features of these commitments include the following:

- The individuals to whom the requirement applies are those who have either a history or pending charge of one or more violent acts, or who have previously been acquitted by reason of insanity or found incompetent to stand trial.
- The courts can order these commitments to be served on either an inpatient basis at an Evaluation and Treatment Facility, for a period of up to 14 days (plus any unused portion of an additional 15-day period allowed for competency *evaluation*[4]), ***or*** on an outpatient basis while on "conditional release," for a period of up to 90 days. In practice, however, the conditional release portion of this provision has not been implemented, so all commitments to date have been on an inpatient basis. Additionally, although there are community Evaluation and Treatment Facilities, all such commitments to date have been at either Western or Eastern State Hospitals.

As shown in Exhibit 1, if competency is not restored as a result of the competency restoration commitment, the person must be detained and sent for a ***civil commitment evaluation***. These evaluations, which to date have all been conducted at the state hospitals, involve assessments by mental health professionals to determine if the person should be involuntarily committed under the state's civil commitment statutes (Chapter 71.05 RCW).

The last step in the process only comes into play if the mental health professionals conducting the civil commitment evaluation noted above conclude that the person does *not* meet the statutory criteria for civil commitment, and should therefore be released. In this event, the recommendation is required to undergo ***Superior Court review***. It should be noted that this review is *not required* if both the mental health professional and prosecutor agree that the person "does not present a likelihood of serious harm or is not gravely disabled." To date, no hearings of this type have been held.

Misdemeanant Competency Restoration Commitments.[5] What's Happened So Far

Misdemeanant Competency *Evaluations*

Technically, SB 6214 did not change statutes or procedures with respect to requesting competency evaluations for those charged with misdemeanor crimes. Nonetheless, it has contributed to a significant increase in the number of misdemeanant competency evaluations that are ordered by local judges, and conducted at the two state hospitals.

One reason for this is increased publicity and awareness of the events that led to the

[3] This process was different than it was for similar persons charged with ***felony*** crimes. While it was not required prior to SB 6214, persons charged with felonies who were found incompetent to stand trial were typically ordered by the court to undergo involuntary mental health treatment. SB 6214 did make this a mandatory requirement.

[4] Though we did not examine the issue further, some individuals reported to us that there is substantial variation among jurisdictions in terms of how they calculate and apply any remaining balance of a 15-day evaluation period.

[5] The term "misdemeanant" is used here, and throughout the balance of this report, for conversational ease. Technically, these commitments apply to persons charged with *non-felony* crimes, which include both misdemeanors and gross misdemeanors.

Act's passage. Perhaps more importantly, however, SB 6214 established (for the first time) a specific process to deal with misdemeanant offenders who were found mentally incompetent to stand trial. Without such a system, there previously was less incentive for local officials to seek a determination of competency, since a finding of *in*competency typically just resulted in the dismissal of criminal charges and the release of the individual.

As shown in Exhibit 2, the number of misdemeanant competency evaluations conducted at the two state hospitals nearly tripled between 1997 and the first 12 months following the effective date of these provisions (March 1999 through February 2000).[6]

In response to these changes, Western State Hospital instituted a program of conducting most of its misdemeanor competency evaluations on an outpatient basis. This means that it sends mental health staff out to the local communities to conduct the evaluations there, most typically at the local jail. As shown in Exhibit 2, in the March 1999 through February 2000 time period, Western State conducted 86 percent of its 493 misdemeanant competency evaluations on an outpatient basis. As a result, while the substantial increase in misdemeanant competency evaluations has affected Western State's overall workload, it has not had a major impact on its inpatient census.

In contrast, in the same time period cited above, Eastern State Hospital conducted

Exhibit 2
Misdemeanant Competency Evaluations
Calendar Year 1997 compared to 12 Month Period
of Mar-99 Through Feb-00*

Misdemeanant Competency Evaluations Conducted	1997	Mar-99 Feb-00	Percent Change
Eastern State Hospital			
Total Evaluations Conducted	37	104	181%
Percentage Conducted on Outpatient Basis	*0%*	*18%*	-
Western State Hospital			
Total Evaluations Conducted	165	493	199%
Percentage Conducted on Outpatient Basis	*25%*	*86%*	-
Both Hospitals Combined			
Total Evaluations Conducted	202	597	196%
Percentage Conducted on Outpatient Basis	*21%*	*74%*	-

*March 1999 through February 2000 represents the first 12 months following the effective date of SB 6214's competency related provisions.
Source: JLARC, based on data provided by the Mental Health Division.

[6] SB 6214's criminal competency provisions became effective March 1, 1999. The number of competency evaluations conducted at the state hospitals actually began to increase in 1998, *before* the provisions took effect. From interviews, it appears likely that the 1998 increase was due, at least in part, to publicity surrounding the late-1997 stabbing incident that led to SB 6214's enactment. For this reason, 1997 is used as the base year in this comparison.

only 18 percent of its 104 misdemeanant competency evaluations on an outpatient basis. Consequently, this change has had an impact on Eastern State's inpatient census. This issue is discussed further, later in this Section under "Potential Problem Areas."

Number of Misdemeanant Competency Restoration Commitments

To date, the number of misdemeanant competency restoration commitments has been far less than was originally projected. In the final fiscal note filed on SB 6214 it was estimated that there would be 657 such commitments per year. In the first year following the effective date of this provision there were only 121 such commitments; 103 at Western State Hospital, and 18 at Eastern State Hospital.[7]

A review of the commitments ordered *by county of commitment*, shows that over half (56 percent) came from King County (a figure that is disproportionately higher than King County's 29 percent share of the total state population).[8] Despite the fact that these commitments have been used in King County far more than in other counties, the *rate* at which they've been used is still less than half of what was originally projected. To illustrate, if commitments had been recorded in all counties at the same rate as in King County, the total number of commitments would only have been 273, compared to the projected number of 657.

Thus, commitments are coming from *all* counties at a much lower rate than expected. Of the state's 39 counties, 21 recorded no commitments of this type at all, while 10 other counties recorded only one or two such commitments. Throughout the course of our study we received many comments to the effect that there is still a fairly substantial lack of familiarity with the provisions of SB 6214 in many areas of the state, and these figures may be illustrative of that.

Initial Outcomes

The following relates back to the key steps contained in SB 6214's criminal competency process, as outlined in Exhibit 1 on page 3, and is based on 204 misdemeanant competency restoration commitments that occurred during the first 17 months following the effective date of the relevant statutory provisions.[9] Complete data on which the following observations are based is included as Appendix 4.

- **Competency Restoration Commitments:** More often than not, ***competency is not restored*** as a result of the competency restoration commitment. For the two state hospitals combined, 58 percent of all such commitments failed to restore competency. A number of individuals, including mental health professionals at the two state hospitals, indicated that the 14-day maximum commitment period (plus any unused portion of a 15-day *evaluation* period) is inadequate for restoring competency. This issue is discussed further under "Potential Problem Areas" at the end of this Section.
- **Not Competent Defendants Returned For Civil Evaluation:** Approximately three-quarters of those who are recommended to be "not competent"

[7] First year data is for the period March 1999 through February 2000. During the next five month period (March through July, 2000), the average number of *monthly* commitments increased slightly. If this increase continued throughout the course of a year, it would equate to an annual total of 199 commitments; higher than in the first year, but still far short of original projections.

[8] Based on all such commitments ordered March 1999 through August 2000.

[9] This number is higher than the 121 commitments previously referenced because of an expanded time frame. All data was provided by the Mental Health Division of the Department of Social and Health Services.

following their competency restoration commitments are returned for a civil commitment evaluation. Under SB 6214, essentially ***all*** such persons are required to be returned for a civil evaluation.

In part, some of the "fall-out" may be attributed to the fact that the numbers for "not competent misdemeanants" shown in Exhibit 2 on page 5 reflect only the *recommendation* of the mental health professionals at the state hospitals. Although the courts typically follow these recommendations, they are not obligated to do so. State hospital staff estimated that courts may elect not to follow their recommendations in anywhere from 1 to 5 percent of all cases.

The fall-out could also be attributable to a lack of familiarity with the statute's provisions. For example, one County Designated Mental Health Professional Supervisor reported that it was only "recently" that prosecutors in that medium-sized jurisdiction had begun using this provision (i.e., retaining the defendant in order to send them for a civil commitment evaluation).

- **Not Competent Defendants Civilly Committed:** Of those who are returned for a civil commitment evaluation, following a failed competency restoration commitment, 84 percent are civilly committed.
- **The Bottom-Line:** Prior to SB 6214, individuals charged with misdemeanors who were found incompetent to stand trial typically had their criminal charges dismissed, and were then released back into the community. For high-risk offenders, this was one of the "cracks" in the system that SB 6214 sought to fill in one of two ways, either: 1) restore the person to competency, thereby allowing the criminal process to proceed, or 2) if appropriate, have the person civilly committed.

  Of those persons committed for misdemeanant competency restoration during the first 17 months following the effective date of these provisions, just over three-quarters fell into one of these two categories: 42 percent were restored to competency following the restoration commitment, and 35 percent were civilly committed.

Potential Problem Areas

Misdemeanant Competency Evaluations at Eastern State Hospital

Both state hospitals have experienced a sharp increase in the number of misdemeanant competency evaluations they have conducted; increases that are indirectly attributable to SB 6214. This increase has been somewhat problematic for Eastern State Hospital, and by extension, some of the jurisdictions in its service area.

Eastern State Hospital staff reported that, as of early September, they had 31 individuals waiting to be admitted for competency evaluations. They noted that they'd "always" had the waiting list, even prior to SB 6214, but that it is longer now as a result of the Act.

The Court Commissioner for Spokane's combined District and Municipal Mental Health Court reported that there was often a delay of up to 30 to 60 days in getting a defendant admitted for an evaluation, and characterized this as their "biggest frustration." A local jail official in another Eastern Washington county also commented that mentally ill offenders often sit for weeks in their jail waiting to get in for a competency evaluation.

Western State Hospital conducts most of these evaluations in the community, on an outpatient basis (typically in local jails). The evaluation often involves a single

interview with the defendant. In contrast, Eastern conducts most of these evaluations on an inpatient basis, with the average length of stay reported to be from 13 to 15 days. This adds to Eastern's inpatient population.

When asked why they had not pursued conducting more evaluations on an outpatient basis, Eastern State Hospital staff indicated it was a matter of staffing and timeliness. They reported that because of their large service area and associated travel time, they could conduct five inpatient evaluations in the time it would take to conduct one outpatient evaluation. Another key factor they cited is a statutory provision which requires that all competency evaluations be conducted by ***two*** "qualified experts or professional persons" (RCW 10.77.060 (1)(a)).

Western State Hospital staff indicated that this statutory requirement is typically waived for outpatient evaluations – with the agreement of both prosecutors and defense attorneys -- in most of the jurisdictions in which they operate. Staff from Eastern State Hospital reported that jurisdictions in their service area are typically unwilling to waive the requirement. The Commissioner for Spokane's District and Municipal Mental Health Court did confirm that the requirement is not waived in that jurisdiction.

Mental health professionals at the state hospitals reported that when competency evaluations are conducted by ***two*** mental health professionals, there is almost always concurrence in their findings. The question arises whether the requirement serves as an appropriate and necessary quality control "check," or an unnecessary and burdensome requirement. The Legislature should review this issue and consider modifying the requirement. Options could include modifying the requirement for misdemeanor cases only, or specifically authorizing the existing requirement to be waived with the concurrence of the prosecutor and defense attorney.

In order to ensure that misdemeanant competency evaluations are being conducted in an efficient manner, the Mental Health Division should review Eastern State Hospital's practices with respect to conducting such evaluations. Specifically, the Division should review: 1) Eastern's practice of conducting most of its evaluations on an inpatient basis, and 2) the appropriateness of Eastern's average length-of-stay for those evaluations it conducts on an inpatient basis.

Recommendation 1

The Mental Health Division should review Eastern State Hospital's practices and policies related to conducting misdemeanant criminal competency evaluations to determine if they are appropriate and efficient.

Recommendation 2

The Legislature should consider modifying the current statutory requirement that all competency evaluations be conducted by two mental health professionals. Options could include modifying the requirement for misdemeanor cases only, or specifically authorizing the existing requirement to be waived with the concurrence of the prosecutor and defense attorney.

Adequacy of the 14-Day Competency Restoration Period

Under SB 6214, competency restoration commitments are limited to a maximum of 14 days, *plus* any unused portion of an additional 15-day period that is allowed for a competency *evaluation* commitment. Data provided by the Mental Health Division shows that the average total length of stay for such commitments has been approximately 19 days at Western State Hospital, and 14 days at Eastern State Hospital.

To date, the majority of misdemeanant competency restoration commitments (58 percent) ***have not*** resulted in the restoration of competency. Throughout the course of our study, numerous individuals shared with us their view that the 14-day period is inadequate to restore competency (even when combined with any unused evaluation time). Among others, these comments came from mental health court officers in the state's two largest cities, and from mental health professionals at both state hospitals. The latter commented that the time period is not sufficient to allow various psychiatric medications to take effect, particularly insofar as dosage levels for many of them are required to be increased gradually.

Recommendation 3

The Legislature should consider increasing the maximum duration of misdemeanant competency restoration commitments.

Loss of Local Flexibility

SB 6214 established a statewide, formal process for dealing with misdemeanor offenders for whom competency was a potential issue. One large RSN reported that the process established by the Act tends to interfere with the processes and system it had already developed on its own to deal with the same population. In their view, this sometimes leads to *reduced* treatment effectiveness.

The RSN in question has a very active mental health program in its local jail, and places substantial emphasis on diverting appropriate individuals into local treatment programs as soon as possible. This is based on their belief that treatment success is significantly enhanced if individuals are moved into treatment at the point when their "crisis" is most acute, because they are then far more motivated to accept various treatment options.

RSN staff report that the competency evaluation process, which has indirectly been impacted by SB 6214, has been problematic in that it requires individuals to spend far more time in jail than they otherwise would awaiting the evaluation — often up to seven days or more. This causes significant delays in getting these individuals into local treatment programs.

Staff in this RSN also reported that the competency restoration period can sometimes "backfire." In some instances, they feel it gets individuals "just stable enough," so that their competency is restored and they do not meet the criteria for civil commitment, but they are no longer interested in *voluntarily* agreeing to treatment.

CHANGES TO THE CIVIL COMMITMENT LAWS

Overview of Major Changes

Major changes made by SB 6214 to the state's civil commitment statutes (Chapter 71.05 RCW) include the following:

1) Definitional and procedural changes that expanded the criteria for determining when to evaluate, detain, and commit individuals under the state's involuntary commitment law. These changes placed greater emphasis on an individual's current and past history of violence, and included:

   - ✓ Expanding the definition of "likelihood of serious harm" – which is a key standard used for determining whether someone should be civilly committed – to include situations where a person who has a history of violent acts threatens the safety of another; and

   - ✓ Requiring the courts, when making a determination of whether someone presents a "likelihood of serious harm" to give "great weight" to a recent history of violent acts and/or previous commitments.

2) A requirement that County Designated Mental Health Professionals (CDMHPs), when conducting evaluations under the civil commitment statutes, consider “all reasonably available information and records” regarding a person’s past history of violent acts, prior civil commitments and prior determinations of incompetency or insanity under RCW 10.77.
3) Changes that “tighten up” provisions related to persons who have been civilly committed, but then “conditionally released” (meaning released from inpatient treatment in order to receive treatment on an outpatient basis). The changes require that such a person be at least temporarily detained if, in the opinion of their outpatient treatment provider, they fail to adhere to their release terms, or experience a substantial deterioration in their condition, and as a result present an increased likelihood of serious harm.
4) A requirement that in any judicial proceeding where a court does not follow a professional person’s recommendation that someone be civilly committed, that the court enter specific findings on its reasons for not doing so.
5) A requirement that the Department of Social and Health Services develop “statewide protocols” to be utilized by CDMHPs in carrying out their duties under the civil commitment and criminal insanity statutes.

Civil Changes: What’s Happened So Far:

This sub-section describes the impact of the five major statutory changes noted above. Most notable were an increase in revocation related detentions, problems with accessing past history information, and an incomplete understanding of the Act’s provisions related to conditional releases.

1) Have SB 6214’s Definitional and Procedural Changes Led to an Increase in Civil Commitments?

SB 6214’s civil commitment changes became effective July 1, 1998. The final fiscal note filed on the bill estimated it would increase civil commitments by 10 percent. Although data collected by the Mental Health Division shows that civil commitments have increased since 1998*, it is unclear how much of the increase, if any, can be attributed to SB 6214*. (There is no data that shows, for *all* civil commitments, which ones are or are not specifically attributable to SB 6214.)

The measure most often used by the MHD to describe “civil commitments” is the number of *adult civil commitment detentions*. The data collected by the Mental Health Division includes two types of adult civil commitment detentions; *initial* detentions, and detentions for *revocations* of conditional release commitments. It is the former that is probably most indicative of SB 6214’s general system changes.

Data that covers the time period of 1998 through 2000, *and distinguishes between the two types of detentions*, is only available for 30 of the state’s 39 counties. As shown in Exhibit 3 on the following page, total detentions increased 16 percent over this time period. Initial detentions, however, only increased 9 percent. Detentions for revocations, on the other hand, increased markedly—92 percent (most likely due to SB 6214’s changes related to conditional release provisions).

While initial civil commitments increased 9 percent statewide, there was substantial variation among counties. Sixteen counties reported increases, two recorded no change, and 12 had decreases. Among larger counties, Pierce, Kitsap and Spokane recorded large increases of 47, 37 and 35 percent, respectively, while King County recorded a decrease of 18 percent.

Exhibit 3
Adult Civil Commitment Detentions in 30 Washington Counties*
First Six Months of 1998 Compared to First Six Months of 2000

Detention Type	Jan-June 1998	Jan-June 2000	Percent Change
Initial Detentions (Non-Revocation Related)	2,733	2,970	9%
Revocation Related Detentions	247	474	92%
Total Detentions	2,980	3,444	16%

*Three years worth of data only available for 30 of Washington's 39 counties, representing 82 percent of the state's total population.
Source: JLARC, based on data provided by the Mental Health Division.

Through surveys, we asked various groups for their assessment on what impact SB 6214 has had on increasing civil commitments. The responses tend to indicate that the Act has not had a dramatic impact. For example, among the large counties that reported substantial increases in the number of civil commitment detentions, only one of the county CDMHP Supervisors reported that Senate Bill 6214 had definitely been a major contributing factor to the increase. The others reported that SB 6214 had likely had *some* impact, but not necessarily a major impact.

Similarly, five Regional Support Network (RSN) Administrators reported that civil commitments in their jurisdiction had increased "slightly" as a result of SB 6214, while six said there had been "no noticeable increase" (with the remainder having no opinion or not answering the question). Finally, staff from both state hospitals reported that SB 6214 had ***not*** had a major impact on them in terms of increasing their civil commitment bed days. This is discussed in more detail in Part 2 of this report titled "*How Are Various Entities Impacted By The Act?*"

2) Requirement to Consider Past History Information

SB 6214 requires CDMHPs and other mental health professionals, when conducting evaluations under the civil commitment laws, to consider "all reasonably available information and records" regarding a person's past history of violent acts, as well as prior civil commitments and determinations of incompetency or insanity.

It appears this requirement is being fully complied with at Western State Hospital, and to a somewhat lesser extent at Eastern State Hospital.[10]

At the local level, however, we received numerous comments from CDMHPs throughout the state regarding the difficulty of obtaining this information, and uncertainty as to how to obtain it. One county CDMHP responding to our survey indicated that they do not routinely check for such information, but only do so if it is specifically indicated [as being appropriate], based on their evaluation. Another Supervisor implied they also do not run routine checks in their jurisdictions, both

[10] Both state hospitals report obtaining criminal history information on all forensic admissions (i.e., criminal competency and insanity). As a matter of course, Western State Hospital also obtains State Patrol WATCH reports on all civil admissions, whereas Eastern State Hospital only obtains such reports when specifically requested by clinical staff. Eastern State Hospital staff report they do collect past history information from other sources, however, such as case records or family members.

because of the time involved and because of the difficulty in getting information.

In our survey of County CDMHP Supervisors, we asked what sources of information they accessed to comply with the requirement. The sources most frequently cited were "RSN and/or Case Manager," and "Local Sheriff/Police/Jail Records." (Eighty-three and 61 percent of respondents, respectively, reported that they either "always" or "frequently" accessed these sources).

The survey responses show that two key sources of information are frequently not accessed.

- Only 8 percent of the CDMHP Supervisors said they "always" or "frequently" accessed Washington State Patrol databases, while 84 percent said they "rarely" or "never" did (with the remainder saying they did so "occasionally"). The State Patrol "WATCH" reports are perhaps the most easily obtainable and widely available source of criminal history information. Though limited to criminal *conviction* information within Washington State, individual background reports are available online to the public for a cost of $10.
- Only 34 percent of the Supervisors said they always or frequently check with the state hospitals, while 38 percent said they rarely or never did. Both hospitals maintain information on past civil commitments and recommendations related to competency. Western State Hospital staff reported that they initially expected to be inundated with calls from CDMHPs in the field regarding this information, and actually increased staffing to deal with the expected calls, but never received a single call. Eastern State Hospital staff reported that they do get some calls from CDMHPs.

It is clear from our interviews and survey results that many mental health professionals are unsure how to access criminal history information. The CDMHP "statewide protocols," which are discussed later in this section, do not provide any specific suggestions or guidance on how to obtain this information. Without such knowledge, mental health professionals in the field are unable to fully comply with the requirement.

Recommendation 4

The Mental Health Division should develop and disseminate information to appropriate mental health professionals regarding how to access information on an individual's past history of violence and previous civil commitments or findings of criminal incompetency or insanity. If determined appropriate, this could be accomplished by incorporating the information into the Statewide County Designated Mental Health Professionals (CDMHP) Protocols.

3) Provisions Related To Conditional Release Revocations

SB 6214 modified provisions related to individuals who are civilly committed, but have been "conditionally released," meaning that they have been released from inpatient commitment, and are receiving court-ordered treatment in the community on an outpatient basis.

The changes were designed to help accomplish two things: 1) to ensure that persons who are on conditional release comply with the terms of their release, which typically include taking prescribed medications and attending outpatient treatment sessions, and 2) to provide a mechanism for detaining and re-evaluating persons on conditional release if their mental condition appears to be deteriorating.

Specifically, the Act requires a facility providing outpatient treatment to someone on conditional release to notify a CDMHP if the person

> *" . . . fails to adhere to the terms and conditions of his or her release, or experiences substantial deterioration in his or her condition, and, as a result, presents an increased likelihood of serious harm."* (RCW 71.05.340(3)(b))

Upon being so notified by a treatment facility, the CDMHP is then ***required*** to order that the person be apprehended and detained for up to five days until a hearing is held to determine whether the person should be returned to an inpatient commitment. Prior to SB 6214, a CDMHPs authority to detain someone in this situation was permissive.

What Has Been The Impact of This Change? Presumably, because of this change, revocation related detentions have increased substantially since SB 6214 was enacted. As shown in Exhibit 3 on page 11, the combined two-year increase for the 30 counties for which data is available was 92 percent. Most of the state's larger counties experienced increases, led by Yakima and Pierce Counties, which recorded increases of 364 and 232 percent, respectively.

Another result of this change is that many facilities that provide outpatient treatment to individuals on conditional release – typically local private provider agencies – have had to increase their monitoring activities. One-half of the private provider agencies that responded to a survey we conducted reported that they had increased their monitoring activities (28 percent said "substantially," and 22 percent "slightly").

Is The New Requirement Being Complied With? There are indications that CDMHPs are not always complying with the requirement to detain an individual after being notified by a facility that the person is either not complying with their release terms, or has experienced substantial deterioration.

At least four provider agencies reported that many of the individuals they notified CDMHPs about were not detained. One provider reported than CDMHPs only detained around 3 percent of the individuals for whom they provided notification. Another estimated that they had provided 200 notifications, but that only 100 had been detained. The comparable numbers reported by yet another provider were 60 and 6, respectively.

In our survey of County CDMHP Supervisors, two respondents – both from larger counties – reported that they detained only a fraction of the individuals for whom they received notification (one-quarter in one county, and one-half in the other).

CDMHP Supervisors whom we contacted about this issue said that the key criterion in determining whether to detain someone for possible revocation is whether the person presents *an increased likelihood of serious harm.* Even if they receive notification from a provider that a client's condition has deteriorated or that they are not complying with their release terms, if there is no accompanying claim that the person presents an increased likelihood of serious harm, they are not obligated to order the person detained. They implied that this often happens, and that their own subsequent evaluation does not indicate an increased risk of harm.

It is possible that this could explain, at least in part, why a number of providers report that CDMHPs are not detaining individuals as seemingly required by the Act. In other words, some providers may not completely understand their role under this statutory requirement, and as a result, may be providing formal notifications to CDMHPs in situations where they are not warranted.

Recommendation 5

The Mental Health Division, in collaboration with the Regional Support Networks, should ensure that all County Designated Mental Health Professionals (CDMHPs) and appropriate community treatment providers are informed about their statutory roles and responsibilities relative to SB 6214's conditional release provisions.

4) Requirement That Courts "Enter Findings" When Not Following A Civil Commitment Recommendation

SB 6214 requires that in any judicial proceeding, in which a mental health professional has made a recommendation regarding whether someone should be civilly committed, and the court does ***not*** follow that recommendation, the court is to

> "*. . . enter findings that state with particularity its reasoning, including a finding whether the state met its burden of proof in showing whether the person presents a likelihood of serious harm.*" (RCW 71.05.237)

This situation does not appear to arise very often. In our survey of the state's Superior Courts, only four counties reported some number of instances where the court does not follow a professional person's recommendation to commit. The number of instances reported as occurring annually included 14 in Clark County, ten in Yakima County and two in Spokane County. (Both Pierce and King County said the number of instances in their county was "unknown."

When asked whether they complied with the requirement to enter findings as outlined above, most courts (for which the question was applicable) indicated they did, although a majority reported that their findings were only entered "orally."

5) The CDMHP Protocols

In response to concerns that there was too much variation statewide in how CDMHPs carried out their statutory responsibilities, SB 6214 required the Department of Social and Health Services to develop statewide protocols to be used in the administration of the civil commitment and criminal competency statutes.[11] The statute directed that the protocols provide for "uniform development and application of criteria in evaluation and commitment recommendations . . ." Following a year of development work by an Advisory Group, and a separate Work Group, the protocols were adopted in September 1999.

Based on responses received to our survey of County CDMHP Supervisors, most CDMHP offices are familiar with the protocols (61 percent claim to be "very familiar" while 35 percent claim to be "somewhat familiar", and a large majority (87 percent) have found them to be at least "somewhat helpful."

Approximately half report that they are in full compliance with the individual protocols (there are over 40 individually numbered protocols), while the other half report that they are in compliance with "most, but not all" of the protocols. The protocols reported most often as ***not*** being complied with fully related to obtaining past criminal history information, due to the difficulty in obtaining that information.

In terms of day-to-day impact, only one CDMHP Supervisor reported that the protocols led to "major changes" in the way CDMHPs in that jurisdiction carried out their duties. Twenty-five percent reported that the protocols led to "moderate changes," 50 percent reported they led to

[11] While typically referred to as the "CDMHP Protocols," they technically also apply to other mental health "professional persons," such as psychiatrists and psychologists working within the state hospitals.

"minor changes," and 21 percent reported they caused "no changes" at all.

INFORMATION SHARING PROVISIONS

Consistent with its intent to provide for a seamless transition between the mental health and criminal justice systems, SB 6214 included a number of provisions related to information sharing among key parties within both systems, including CDMHPs, the state hospitals, local correctional facilities, and prosecuting and defense attorneys. An example is a requirement that the state hospitals send copies of competency evaluations to relevant criminal justice agencies.

In general, we did not identify major problems in this area. Survey responses from local courts, prosecutors and jails generally indicated that the level of coordination and information sharing with CDMHPs and the state hospitals was perceived to be at least "good."[12]

Through interviews and survey responses, however, several persons raised concerns about the timeliness of getting reports (presumably competency evaluation reports) from Western State Hospital. Though we did not receive similar "outside" comments regarding Eastern State Hospital, staff at that facility acknowledged that they often did not meet SB 6214's requirement to provide competency evaluation reports at least 24 hours prior to transferring the defendant back to the local correctional facility.

One additional provision worth noting is a requirement that the Department of Corrections (DOC), when admitting new inmates, inquire as to whether the person has received outpatient mental health treatment within the previous two years, and if so, from what provider. DOC is then required to contact that provider to see if they wish to be notified upon the inmate's release. According to DOC staff, this provision has been implemented. Through an interagency agreement, it provides names of all new inmates to the Mental Health Division, which then runs those names through its databases to determine those that have received prior mental health treatment.

[12] JLARC staff conducted surveys of Superior Courts, District and Municipal Courts, Prosecuting Attorneys, and Municipal Attorneys in cities of 25,000+ population. A sub-committee of the Washington Association of Sheriffs and Police Chiefs conducted a survey of local jails.

PART 2: HOW ARE VARIOUS ENTITIES IMPACTED BY THE ACT?

SB 6214 is a far reaching piece of legislation that impacts a number of different entities. This section address the impact of the Act on: the state hospitals; County Designated Mental Health Professionals (CDMHPs); the Regional Support Networks (RSNs); private providers; local courts and prosecutors; and jails. Although there are some exceptions, in general, the Act has not had a major impact on the workload of these entities.

STATE HOSPITALS

To date, SB 6214 does not appear to have had a significant impact on the state hospitals, at least in comparison to what was originally expected.

In terms of the Act's impact on hospital census:

- On the ***civil side***, the average monthly census for the two state hospitals combined increased a total of 8.2 percent over the ***first two years*** following the July 1998 effective date of the Act's

civil provisions.[13] This increase translates into the equivalent of 67 additional beds – from an average of 817 beds during fiscal year 1998, to an average of 884 beds during fiscal year 2000.

The original fiscal note estimated that SB 6214's civil commitment changes would result in 174 additional 90-day commitments at the state hospitals, equating to 43 additional beds. While the actual increase of 67 beds over two years is obviously greater than the 43 additional beds projected, as was noted in the previous section, it cannot be assumed that the entire increase is attributable to SB 6214.

In interviews, Western State Hospital (civil) staff reported their view that SB 6214's civil changes ***had not*** caused an increase in bed days. They reported that they opened a new ward in anticipation of increased census due to SB 6214, but ended up closing it due to a lack of need. They also reported that initially they thought they would get a large number of high-security risk clients, but that has not occurred. Eastern State Hospital staff also generally indicated that SB 6214 had not a major impact on them, although they noted they have observed an increase in the number of civil commitments that come from the forensic unit.

- On the ***forensic side (i.e., criminal competency and insanity),*** the major impact of SB 6214 was expected to result from misdemeanant competency restoration commitments. As noted in the preceding section, however, there have been far fewer of these commitments than originally projected (121 in the first year versus a projected number of 657).

  In terms of actual census figures, the average monthly forensic census for the two state hospitals combined increased 2.3 percent ***in the first year*** following the March 1999 effective date of the Act's criminal competency provisions. This increase translates into the equivalent of seven additional beds – from 296 beds during the 12-month period of March 1998 through February 1999, to 303 beds during the period of March 1999 through February 2000.

  By hospital, Western State Hospital recorded a 4 percent increase (up nine beds), while Eastern State Hospital recorded a decrease of 1.4 percent (down two beds). The increase at Western State Hospital would likely have been greater if it were not for their policy of conducting misdemeanant competency evaluations on an outpatient basis. Despite the reported census figures, Eastern State Hospital (forensic) staff indicated to us that they feel SB 6214 has contributed to an increase in their forensic population.

  It should be noted that in the 6-month period since February 2000, Western State Hospital's average monthly forensic census has increased an additional 13 beds. Eastern State Hospital has not recorded a similar increase.

As was noted in the preceding Section, the two state hospitals are also impacted by SB 6214's requirement to obtain criminal history information. Both hospitals report obtaining "NCIC (National Criminal Information Center) Reports" for all forensic admissions. Western State Hospital obtains Washington State Patrol "WATCH" reports for nearly all civil admissions, while Eastern State Hospital obtains such reports as requested by clinical staff. Western State Hospital also contracts with a private firm that can provide information similar to that included in the WATCH report, but for

[13] By hospital, the increase was 8.8 percent for Western State Hospital and 6.4 percent for Eastern State Hospital.

seven other states. (The WATCH reports are limited to conviction information for just Washington State.) Western State Hospital staff said these reports cost approximately $1,300 per month.

CDMHPs

In most jurisdictions, SB 6214 has not had a major impact on the workload of CDMHPs. There certainly are some exceptions to this, however, particularly in some of the larger counties.

In many respects, County Designated Mental Health Professionals, or CDMHPs, are the individuals most on the "front-line" when it comes to many of SB 6214's changes. They are the ones responsible for conducting the *initial* investigation under the civil commitment law, and based on that investigation, the ones authorized to have someone involuntarily detained for up to 72 hours so that a more complete evaluation can be conducted.

Under SB 6214, CDMHPs are most likely to have been impacted by the number of investigations they are required to conduct, and the time required to conduct those investigations.

- Data maintained by the Mental Health Division shows that, *in total*, there has only been a relatively small increase in the number of investigations conducted. However, in some counties the increase has been substantial.

  On a per capita basis, the number of investigations, statewide, increased 4.4 percent from January through June 1998–before the SB 6214's civil provisions took effect – to the same time period in 2000. Among the larger counties, Pierce, Snohomish and Spokane Counties recorded the largest increases (56, 31, and 14 percent, respectively). However, many large counties also recorded decreases, including Kitsap, Clark and King (with decreases of 27, 18 and 5 percent, respectively).

- Among County CDMHP Supervisors who responded to our survey, 13 reported that the time required to conduct an investigation had increased because of the need to check past history information, while eight said it had not. (Among large counties that responded, most said the amount of time had increased.) The average amount of increase was reported to be approximately 45 minutes.

CDMHPs are also impacted to some extent by SB 6214's record keeping and information sharing provisions. Forty-eight percent of those responding to our survey reported that these provisions were at least "somewhat burdensome," to comply with; however, 52 percent said they were either "not very" or "not at all" burdensome to comply with.

One of SB 6214's new requirements was that any time a competency evaluation is conducted (typically by state hospital staff) a copy of the report and recommendation is to be sent to the county CDMHP. While some CDMHPs indicated that this was an extremely time-consuming requirement, only 26 percent of those responding to our survey reported it to be somewhat or very burdensome. What makes it burdensome for some is that the reports have to be read, and new files created, even though many of the reports often require no further action on the part of the CDMHP.

Finally, according to our survey of Regional Support Network (RSN) Administrators, only one county has hired an additional CDMHP in response to the requirements of SB 6214. One other county said it might add a new position in the near future.

REGIONAL SUPPORT NETWORKS (RSNs)

In general, it does not appear that SB 6214 has had a major impact on the workload of *most* RSNs, although there is one where the workload increase is reported to have been fairly significant.

In our survey of the state's 14 RSN Administrators (to which we received 13 responses), we asked what impact SB 6214 has had on the RSN, for both CDMHP-related functions, and for all other functions. (Note: Because of the small number of respondents, the following figures represent the actual number of responses, rather than percentages.)

- One RSN Administrator reported that CDMHP-related workload had increased substantially, seven said it had increased slightly, and four reported that there had been no noticeable increase (with 1 having no opinion);
- For all other functions, two RSN Administrators reported that workload had increased substantially, four said it had increased slightly, and six said there had been no noticeable increase (with one having no opinion).

Other than the CDMHP positions cited above, only one RSN Administrator reported hiring a new staff position because of SB 6214 (a position within the local jail). Two other RSNs indicated that they would be seeking funding for additional positions (one of which was for a half-time clerical position). Another RSN Administrator said that while they have not hired additional staff for their mental health jail unit, the increase they have experienced in their workload equates to approximately one full-time position.

We also asked the Administrators to what extent, if any, they thought SB 6214 had led to an increase in civil commitments – and thus, in-patient bed usage – in their RSN. None reported a substantial increase, while five reported there had been a slight increase, and six reported there had been no noticeable increase (with two either not responding or having no opinion).

Finally, as was noted in the preceding section, one RSN reported significant concerns with SB 6214 in terms how it was perceived to limit the RSNs own flexibility.

COMMUNITY PROVIDERS

Based on the limited response we received to our survey of community treatment providers, it does not appear that SB 6214 has had a major impact on most providers. The impact that has occurred has primarily been in the area of increased client monitoring activities.

Community mental health agencies can be impacted by SB 6214 in two main ways: 1) local evaluation and treatment facilities, which are used for involuntary detentions and commitments, are impacted by the Act's general civil commitment related provisions; and 2) agencies providing outpatient treatment to individuals on conditional release are impacted by SB 6214's changes related to the revocation process.[14]

- Ten facilities that provide emergency involuntary evaluation and treatment services responded to our survey. Only two reported increases in the number of both 72-hour and 14-day commitments. One of these providers felt that the increase was "absolutely" attributable to SB 6214, while the other did not think that it was.
- As noted in the preceding section, one-half of the agencies responding to our survey reported that they had increased their monitoring activities – to clients on

[14] Technically, community treatment agencies could also be impacted in a third way. SB 6214 does not prohibit competency restoration commitments from being served at community evaluation and treatment facilities. To date, however, all such commitments have been at the two state hospitals.

conditional release – as a result of SB 6214. (Twenty-eight percent said their monitoring activities had increased "substantially.")

LOCAL COURTS AND PROSECUTORS

Based on responses to surveys we conducted, it appears that *most* local courts and prosecuting/municipal attorney offices have not been significantly impacted by SB 6214.

- Approximately two-thirds of the survey responses received from the courts (including Superior, District and Municipal courts) indicated that SB 6214 had had "no noticeable impact" on their workload. No reports were received of SB 6214 having a "major impact" on workload.
- Similar to the above, two-thirds of the offices that responded to our survey of county prosecuting attorneys reported that SB 6214 had caused "no noticeable increase" in their workload. Ten percent did indicate, however, that their civil and non-felony competency workload had increased "substantially."
- Although the response to our survey of Municipal Attorneys[15] was quite small (eight total responses), two respondents indicated their workload had increased substantially as a result of SB 6214, while three respondents said it had increased slightly, and three said there had been no noticeable increase. (Municipal attorney offices would only be impacted by SB 6214's misdemeanant competency provisions.)

Both prosecuting and municipal attorney offices were asked if they had hired any additional staff as a result of SB 6214. None of the 27 total respondents indicated that they had.

LOCAL JAILS

Based on the only measure included in the original fiscal note filed on SB 6214, the Act's impact on local jails has been less than originally projected. Because of a low survey response rate, however, we were unable to assess whether SB 6214 may have impacted local jails in other ways.

There are a number of ways in which local jails can be impacted by SB 6214. A key one, and the only one that was identified in the Local Fiscal Note filed on SB 6214, relates to additional bed days spent by misdemeanant offenders, *after* their competency restoration commitments, while awaiting their subsequent competency court hearing. Primarily because the number of competency restoration commitments has been so far below original projections, the number of additional jail bed days attributable to this has also been below what was projected in the fiscal note.

Working in consultation with us, an ad hoc committee established by the Washington Association of Sheriffs and Police Chiefs' Jail Managers and Corrections Committee, conducted a survey of the state's jails to help assess how they had been impacted by SB 6214.

Unfortunately, the response rate was quite low, and therefore, the results cannot be extrapolated to the state's jails in general. For the few jails that did respond, however, the direct impact reported to be caused by the Act, in terms of additional bed days, was generally negligible. Despite the survey results, the ad hoc committee does believe that SB 6214 has contributed to an increase in bed days for the state's jails.

Pierce County RSN/Jail staff assert that their workload has increased significantly as a

[15] Surveys were sent to municipal attorney offices in all cities of 25,000+ population.

result of SB 6214. Moreover, they estimate that as many as 1,350 additional bed days can also be attributed to the Act (out of a total of over 460,000 annually).

PART 3: CONCLUDING DISCUSSION: ARE THE ACT'S GOALS BEING ACHIEVED?

The question of whether the Act's goals are being achieved is difficult to answer conclusively. We considered the goals of the Act to be primarily two-fold:

1) To improve communication and information sharing between the mental health and criminal justice systems, and
2) To provide additional and appropriate treatment opportunities for individuals who have had contact with the criminal justice system, and whose conduct may represent a threat to themselves and others.

In a number of surveys, we asked people how effective they thought the Act had been in achieving these goals. Their responses are displayed in Exhibit 4.

Among most groups, well over half found the Act to be at least somewhat effective in meeting these goals, compared to those who reported that it had either been not very, or not at all effective. However, relatively few survey respondents found the Act to be "very effective" in meeting these goals.

The survey results shown in the Exhibit 4 are generally reflective of the comments we received throughout the course of our study.

Exhibit 4
Survey Responses Concerning SB 6214's Overall Effectiveness

Question: *Generally, how effective do you think SB 6214 has been in improving communication and information sharing between the mental health and criminal justice systems?*

Survey Respondents*	Very Effective	Somewhat Effective	Not Very Effective	Not At All Effective	No Opinion
County CDMHP Supervisors [24]	8%	54%	33%	0%	4%
RSN Administrators [13]	0%	62%	15%	8%	15%
County Prosecuting Atty. Offices [19]	5%	32%	5%	11%	47%
Municipal Attorney Offices [8]	13%	50%	25%	13%	0%

Question: *Generally, how effective do you think SB 6214 has been in providing for additional and appropriate mental health treatment opportunities for individuals who have had contact with the criminal justice system, and whose conduct may represent a threat to themselves or the public?*

Survey Respondents*	Very Effective	Somewhat Effective	Not Very Effective	Not At All Effective	No Opinion
County CDMHP Supervisors [24]	4%	46%	42%	0%	8%
RSN Administrators [12]	0%	75%	8%	8%	8%
County Prosecuting Atty. Offices [17]	12%	18%	12%	6%	53%
Municipal Attorney Offices [8]	38%	38%	13%	13%	0%

** The numbers in brackets denote the total number of individuals who responded to the particular question.*

Source: JLARC.

For the most part, the comments were positive, but not "glowing." The benefits of the Act most often cited fell into three basic categories:

1) Raising awareness related to considering a person's past history of violence in civil commitment decisions;
2) Improving communication between the mental health and criminal justice systems; and
3) Providing a legal mechanism for detaining some number of misdemeanant offenders who previously might have fallen through the cracks.

The overall tone of the comments received during our study is perhaps best illustrated by a comment made by an RSN Administrator, who characterized SB 6214 as having had "a positive but limited effect."

The somewhat limited effect of SB 6214 is probably not surprising given that it is still in the early stages of implementation. Throughout our study, we received many indications, both in interviews and through survey results, that there is still a fairly widespread lack of familiarity with the Act's provisions. As more time goes by, and as familiarity with the Act grows, effectiveness may increase.

To help ensure that familiarity and effectiveness does increase, the Mental Health Division should take continued steps to ensure that all relevant parties—from both the mental health and criminal justice systems—are informed of the Act's provisions. Such steps will involve working in collaboration with other entities, such as the Office of the Administrator for the Courts.

Recommendation 6

The Mental Health Division, working in collaboration with state and local entities, should ensure that pertinent mental health and criminal justice entities are provided relevant information on the provisions of SB 6214.

AGENCY RESPONSES

The Department of Social and Health Services (DSHS) and the Office of Financial Management have responded to the recommendations contained in this report. Both DSHS and OFM partially concur with Recommendation 1 and concur with Recommendations 2, 3, 4, 5, and 6.

Their written comments are provided in Appendix 2.

ACKNOWLEDGEMENTS

We would like to thank staff of the Mental Health Division of the Department of Social and Health Services, Regional Support Networks, and the many other individuals who responded to our surveys and requests for interviews.

Thomas M. Sykes
Legislative Auditor

This report was approved for distribution by the Joint Legislative Audit and Review Committee.

Senator Georgia Gardner
Chair

SUMMARY OF RECOMMENDATIONS

Recommendation 1

The Mental Health Division should review Eastern State Hospital's practices and policies related to conducting misdemeanant criminal competency evaluations to determine if they are appropriate and efficient.

Legislation Required: No

Fiscal Impact: None

Completion Date: July 2001

Recommendation 2

The Legislature should consider modifying the current statutory requirement that all competency evaluations be conducted by two mental health professionals. Options could include modifying the requirement for misdemeanor cases only, or specifically authorizing the existing requirement to be waived with the concurrence of the prosecutor and defense attorney.

Legislation Required: Yes

Fiscal Impact: Could lead to some savings in staffing costs at state hospitals.

Completion Date: 2001 Legislative Session

Recommendation 3

The Legislature should consider increasing the maximum duration of misdemeanant competency restoration commitments.

Legislation Required: Yes

Fiscal Impact: Would likely lead to longer length of stays for these commitments, which would increase costs over current levels. Because there have been so many fewer commitments than originally projected, however, total costs would still likely be less than original projections.

Completion Date: 2001 Legislative Session

Recommendation 4

The Mental Health Division should develop and disseminate information to appropriate mental health professionals regarding how to access information on an individual's past history of violence and previous civil commitments or findings of criminal incompetency or insanity. If determined appropriate, this could be accomplished by incorporating the information into the Statewide County Designated Mental Health Professionals (CDMHPs) Protocols.

Legislation Required: No

Fiscal Impact: None

Completion Date: September 2001

Recommendation 5

The Mental Health Division, in collaboration with the Regional Support Networks, should ensure that all County Designated Mental Health Professionals (CDMHPs) and appropriate community treatment providers are informed about their statutory roles and responsibilities relative to SB 6214's conditional release provisions.

Legislation Required: No

Fiscal Impact: None

Completion Date: By July 2001

Recommendation 6

The Mental Health Division, working in collaboration with state and local entities, should ensure that pertinent mental health and criminal justice entities are provided relevant information on the provisions of SB 6214.

Legislation Required: No

Fiscal Impact: None

Completion Date: September 2001

APPENDIX 1— SCOPE AND OBJECTIVES

SCOPE

As mandated in the Act, this study will examine activities and operations related to the implementation of 2SSB 6214, pertaining to mentally ill offenders. Particular attention will be focused on reviewing the status of implementation efforts, assessing the impact of the Act on key portions of the mental health and criminal justice systems, and on identifying operational problem areas.

OBJECTIVES

1. Review activities and operations related to implementation of the Act to determine whether key provisions have been implemented and are operating consistent with legislative intent.

2. Assess the extent to which the goals of the Act are being achieved in an efficient and effective manner, given the limited time that the Act has been in effect.

3. Assess the impact of the Act, in terms of cost and workload, on key parts of the mental health and criminal justice systems, including, but not limited to the state hospitals, Regional Support Networks, the courts, prosecutors and local jails.

4. Identify problem areas related to implementation of the Act.

APPENDIX 2 — AGENCY RESPONSE

- Department of Social and Health Services (DSHS)
- Office of Financial Management (OFM)
- Auditor's Comments

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STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia WA 98504-5000

November 20, 2000

Thomas M. Sykes, Legislative Auditor
Joint Legislative Audit and Review Committee
P.O. Box 40910
Olympia, Washington 98501

Dear Mr. Sykes:

I am pleased to enclose the Department of Social and Health Services' response to the Joint Legislative Audit and Review Committee report entitled **Mentally Ill Offenders: Study of the Impact of 2SSB 6214**.

We appreciate the opportunity to respond to this report. If you need additional assistance, do not hesitate to contact me.

Sincerely,

DENNIS BRADDOCK
Secretary

Enclosure

MENTALLY ILL OFFENDERS: STUDY OF THE IMPACT OF 2SSB 6214

Thomas M. Sykes, Legislative Auditor
Joint Legislative Audit and Review Committee (JLARC)

The Department of Social and Health Services (DSHS) position on each of the study's six recommendations follows:

RECOMMENDATIONS	AGENCY POSITION	COMMENTS
1. The MHD should review ESH's practices and policies related to conducting criminal competency evaluations to determine if they are appropriate and efficient.	Partially concur	• JLARC staff have clarified that this recommendation means that MHD should review the potential for ESH to conduct more outpatient competency evaluations. • Recruiting forensic staff may be problematic. **Fiscal Impact** • Would require additional funds for outpatient evaluators initially but may resolve the waiting list problem and, in the long run, avoid increased inpatient costs.
2. The legislature should consider modifying the current statutory requirement that all competency evaluations be conducted by two mental health professionals.	Concur	
3. The legislature should consider increasing the maximum duration of misdemeanant competency restoration commitments.	Concur	• Bed day impact at the hospitals is dependent upon the new maximum duration set.
4. The MHD should develop and disseminate information to appropriate mental health professionals regarding how to access information on an individual's past history of violence and previous civil commitments or findings of criminal incompetence or insanity. If determined appropriate, this could be accomplished by incorporating	Concur	

RECOMMENDATIONS	AGENCY POSITION	COMMENTS
the information into the Statewide County Designated Mental Health Professionals (CDMHPs) Protocols.		
5. The MHD, in collaboration with the RSNs, should ensure that all CDMHPs and appropriate community treatment providers are informed about their statutory roles and responsibilities relative to SB 6214's conditional release provisions.	Concur	
6. The MHD, working in collaboration with state and local entities, should ensure that pertinent mental health and criminal justice entities are provided relevant information on the provisions of SB 6214.	Concur	

STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

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November 22, 2000

Mr. Thomas M. Sykes
Legislative Auditor
Joint Legislative Audit and Review Committee
Post Office Box 40910
Olympia WA 98504-0910

Subject: Mentally Ill Offenders: Study of the Impact of 2SSB 6214

Dear Mr. Sykes:

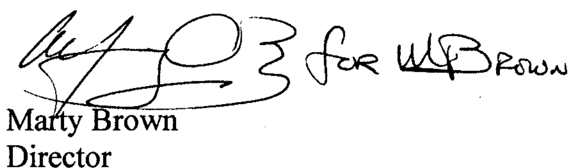
As you requested, the following is the Office of Financial Management's response to the recommendations in the Preliminary Report on the above-referenced study, dated November 16, 2000:

RECOMMENDATION	OFM POSITION	COMMENTS
1. The Mental Health Division should review Eastern State Hospital's practices and policies related to conducting criminal competency evaluations to determine if they are appropriate and efficient.	Partially Concur	JLARC staff have clarified that this means MHD should review the potential for ESH to conduct more outpatient evaluations. Recruiting forensic staff may be problematic, and funding for outpatient evaluators would be needed. However, more outpatient evaluations might avoid increased inpatient costs in the long run.
2. The Legislature should consider modifying the current statutory requirement that all competency evaluations be conducted by two mental health professionals.	Concur	
3. The Legislature should consider increasing the maximum duration of misdemeanant competency restoration commitments.	Concur	

4. The Mental Health Division should develop and disseminate information to appropriate mental health professionals regarding how to access information on an individual's past history of violence and previous civil commitments or findings of criminal incompetency or insanity. If determined appropriate, this could be accomplished by incorporating the information into the Statewide County Designated Mental Health Professionals Protocols.	Concur	
5. The Mental Health Division, in collaboration with the Regional Support Networks, should ensure that all County Designated Mental Health Professionals and appropriate community treatment providers are informed about their statutory roles and responsibilities relative to SB 6214's conditional release provisions.	Concur	
6. The Mental Health Division, working in collaboration with state and local entities, should ensure that pertinent mental health and criminal justice entities are provided relevant information on the provisions of SB 6214.	Concur	

I hope this response is helpful.

Sincerely,



Marty Brown
Director

Auditor's Comments on Department's Response

Recommendation 1: The Mental Health Division should review Eastern State Hospital's practices and policies related to conducting criminal competency evaluations to determine if they are appropriate and efficient.

Agency Position and Comments: Partially Concur.

- JLARC staff have clarified that this recommendation means that MHD should review the potential for ESH to conduct more outpatient competency evaluations.
- JLARC staff have clarified that this recommendation means that MHD should review the potential for ESH to conduct more outpatient competency evaluations.

Fiscal Impact

- Would require additional funds for outpatient evaluators initially but may resolve the waiting list problem and, in the long run, avoid increased inpatient costs.

Auditor's Comments: In regards to the Agency's comment in response to Recommendation 1:

- The Department states that "JLARC staff have clarified that this recommendation means that MHD should review the potential for ESH to conduct more outpatient competency evaluations." This is true, as far as it goes. However, as noted on page 8 of the report, the intent of the recommendation is that MHD's review will **also** include the appropriateness of Eastern's average length-of-stay for those evaluations it conducts on an in-patient basis.
- Under "Fiscal Impact," the Department states that additional funds would be required for outpatient evaluators. The specific recommendation is only that the Division ***review*** Eastern's practices with regards to conducting competency evaluations. There should be no significant fiscal impact associated with the review itself.

  If the result of the review is that the Department concludes that more outpatient evaluators are necessary, a determination will then need to be made as to whether additional funds are required, or whether the cost of the additional positions can be offset through reduced inpatient costs.

APPENDIX 3 — SURVEYS OF ENTITIES IMPACTED BY SB 6214

JLARC staff conducted surveys of a wide range of entities to assess how they have been affected by the Act, and to elicit concerns or perceptions of any problems related to the Act's implementation. For each group surveyed, the table below provides information on the number of surveys sent out, and on the responses received.

Group Surveyed	Surveys Sent Out	Surveys Returned	Survey Response Rate	% of State Population Represented [1]
County Designated Mental Health Professional (CDMHP) Supervisors	37 [2]	25 [3]	67.6%	88.6%
Regional Support Network (RSN) Administrators	14	13	92.9%	95.7%
Superior Courts	31 [4]	12	38.7%	61.8%
District and Municipal Courts	185	49	26.5%	n/a [5]
County Prosecuting Attorneys	39	19	48.7%	58.0% [6]
Municipal Attorneys in Cities Over 25,000 Population	25	8	32.0%	n/a [7]
Community Treatment Providers	85 [8]	26	30.6%	n/a [9]

Notes:

[1] Percent of state population represented by survey responses, based on 2000 population estimates.

[2] Less than the state's number of counties (39) because: 1) the CDMHP function is combined in Benton and Franklin, Chelan and Douglas, and Thurston and Mason Counties, and 2) Clallam County is served by two separate offices.

[3] Twenty-four separate responses were received, but one was for Asotin and Garfield Counties combined.

[4] Twenty-five courts cover single counties, four cover two counties, and two cover three counties.

[5] Not applicable due to overlap in court boundaries (a county may have one District but multiple Municipal Courts).

[6] The actual percentage is actually higher since one survey was returned from an unidentified county.

[7] Not applicable since surveys were not sent to all jurisdictions. The combined population of cities from which responses were received was 49 percent of the population of the cities to which surveys were sent.

[8] Eighty-eight surveys were sent out, but one was a duplicate, and two were inadvertently sent to facilities that only provide treatment to voluntary patients.

[9] Not applicable since one county may have multiple providers, or one provider may serve multiple counties.

APPENDIX 4 – OUTCOMES OF MISDEMEANANT COMPETENCY RESTORATION COMMITMENTS

The table below provides an overview of all 204 misdemeanant competency restoration commitments at Western and Eastern State Hospitals between March 1999 and July 2000 – the first 17 months following the effective date of the relevant statutory provisions.

Measure		Western State Hospital	Eastern State Hospital	Total
Total Misdemeanant Restoration Commitments	[A]	169	35	204
Number recommended to be c**ompetent** following restoration commitment	[B]	76	10	86
- Percentage of all restoration commitments		*45%*	*29%*	*42%*
Number recommended to be n**ot competent** following restoration commitment	[C]	93	25	118
- Percentage of all restoration commitments		*55%*	*71%*	*58%*
Not competent misdemeanants* returned for civil evaluation	[D]	64	22	86
- Percentage of those recommended to be not competent returned for civil evaluation [D / C]		*69%*	*88%*	*73%*
Number of those who are returned for civil evaluation that are civilly committed	[E]	51	21	72
- Percentage of those evaluated for civil commitment that are actually committed [E / D]		*80%*	*95%*	*84%*
Number of misdemeanants who are found incompetent prior to trial, who are either returned to competency following a competency restoration commitment [B], or are subsequently and immediately committed under civil commitment statutes [E]]	[F]	127	31	158
- Percentage returned to competency or civilly committed [F / A]		*75%*	*89%*	*77%*

“ Not competent misdemeanants reflects the formal recommendation made by mental health professionals at the two state hospitals rather than a formal finding of incompetency by a court of law. State Hospital staff estimate the proportion of cases in which the court does not follow the facility’s recommendation to be from 1 to 5 percent.

Source: JLARC, based on data provided by the Mental Health Division.