

January 2004

## **Mentally Ill Misdemeanants: An Evaluation of Change in Public Safety Policy**

### **EXECUTIVE SUMMARY**

The 1998 Legislature significantly revised public safety and treatment policies regarding mentally ill offenders charged with misdemeanor offenses. Second Substitute Senate Bill (2SSB) 6214 (Chapter 297, Laws of 1998) extended the criminal competency restoration process to misdemeanor defendants,<sup>1</sup> broadened the involuntary civil commitment process for both misdemeanor and felony offenders, and strengthened information sharing provisions of the law. The legislative intent was to increase public safety by:

- Requiring that a person's current behavior and mental condition, history, and likelihood of committing acts that threaten public safety should determine treatment procedure, as opposed to a felony offense category;
- Providing additional treatment opportunities for mentally ill offenders whose behavior has led to contact with the criminal justice system; and
- Improving information sharing between the mental health and criminal justice systems to allow professionals better information and easier access to records needed to make decisions affecting public safety.

The legislation directed the Washington State Institute for Public Policy (Institute) to evaluate the outcomes of competency restoration and involuntary civil commitment treatment under the new law. This study addresses whether the legislation influenced the process of competency evaluation in the state. It then focuses on learning whether the main legislative objectives have been met:

- Are misdemeanor defendants receiving treatment under the new law?
- Does this treatment reduce the population's criminal recidivism?

The research design uses a comparison group of similar individuals who received competency evaluations from 1995 to 1997. The treatment group includes misdemeanor defendants who received evaluations and treatment during the first year the new law was in place (March 1, 1999, through February 29, 2000).

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<sup>1</sup> Criminal defendants who lack capacity to understand and assist in defending themselves cannot be tried, convicted, or punished in a court of law. Competency restoration treatment usually involves inpatient psychiatric treatment ordered by the court in an attempt to restore competency to stand trial.

## Treatment and Recidivism Findings

- **Treatment under the new law significantly reduces recidivism.**
  - Treatment group defendants were significantly less likely to be convicted of a subsequent felony crime than comparison group defendants.
  - Treatment group defendants were significantly less likely to be charged with a subsequent misdemeanor or misdemeanor crime against a person than comparison group defendants.
  - Treatment group defendants were significantly more likely to receive outpatient community mental health treatment than those in the comparison group, contributing to a significant reduction in felony reoffending.
- **More defendants received treatment under the new law.**
  - In addition to receiving competency restoration treatment, treatment group defendants were significantly more likely than comparison group defendants to receive civil commitment treatment.

## Competency Restoration and Civil Commitment Findings

- **The legislation is working as intended: 1999 misdemeanor defendants evaluated as incompetent to stand trial and determined to be a threat to public safety are receiving competency restoration treatment.**
  - Defendants with felony or misdemeanor crimes against persons, and defendants for whom the evaluator records a current or past violent offense are more likely to receive competency restoration treatment.
  - Defendants with severe mental illnesses, such as schizophrenia, bipolar, and other psychotic disorders, are more likely to receive competency restoration treatment.
- **For most individuals who are not restored to competency, the state pursues involuntary civil commitment proceedings.**
  - Approximately 90 percent of the 69 defendants who remained incompetent to stand trial after restoration treatment were detained for involuntary civil commitment proceedings, and 58 defendants received further treatment.
  - Civil commitment treatment involved fairly lengthy hospitalizations at Eastern State Hospital (ESH) and Western State Hospital (WSH): the median number of days was 57 and 97, respectively. Three defendants hospitalized at WSH were still in residence as of June 2003.
  - Defendants receiving civil commitment treatment were significantly more likely to receive community mental health services after treatment compared with defendants receiving only competency restoration treatment.

## Competency Evaluation Findings

- **Courts have adopted the misdemeanor criminal competency procedures available under the new law.**
  - Competency evaluations were ordered for 561 defendants in 1999 compared with 166 in 1996, a 238 percent increase.
  - The legislation had the greatest effect in King County, which accounted for 29 percent of all evaluations in 1996, rising to 48 percent in 1999.
- **The majority of defendants receiving competency evaluations have extensive involvement with the criminal justice system and a serious mental illness.**
  - About 40 percent of defendants have a felony conviction, and 75 percent have a misdemeanor conviction. Defendants average 11 misdemeanor criminal charge filings.
  - Three-quarters of defendants receiving evaluations have a major mental illness, and half have a substance disorder. Over 50 percent have prior psychiatric hospitalization.

## Information Sharing and Criminal History Findings

- **Information sharing procedures have improved.**
  - Court orders, evaluations, jail transfer forms, and other documents are moving among the appropriate mental health and criminal justice system actors in a timely fashion.
- **Information on past civil commitments, violent acts, and prior insanity and incompetency findings are not consistently available to evaluators making criminal competency and civil commitment decisions.**
  - No central source maintains information on persons with prior civil commitments in Washington State.
  - Washington criminal records do not consistently report criminal insanity and incompetency findings.

## Conclusions

One of the major purposes of 2SSB 6214 is to increase treatment opportunities for misdemeanor defendants identified as threats to public safety. The goal of increased treatment is to stabilize mentally ill individuals in a hospital or community setting and, ultimately, to reduce criminal reoffending, particularly violent and serious crimes.

The legislation achieved its objectives but leaves some concerns about how to best assure mentally ill offenders receive continuous treatment and services. Defendants who are returned to the courts competent to stand trial are significantly less likely to connect to the community treatment system compared with defendants whose charges are dismissed and who receive

further hospitalization under involuntary civil commitment laws. This finding signals a weak link in treatment continuity between the criminal justice and mental health systems for some, particularly since outpatient treatment was an important factor in reducing felony reoffending.

2SSB 6214 influenced a key piece of the mental health and criminal justice connection, but other aspects still need to be addressed. Most mentally ill offenders enter the community directly from jails and prisons, not hospitals. Some may be competent to stand trial while others may need to be restored to competency, but there are individuals in each group—those competent to stand trial and those needing competency restoration—who have a violent background and pose some risk to public safety. In either instance, treatment continuity is an important objective.

A significant number of mentally ill persons will continue to have contact with the criminal justice system, and criminal justice involvement is a strong marker of treatment need. How to best treat mentally ill offenders and reduce the threat to public safety is an ongoing and important public policy question.