

SENATE BILL 5039

State of Washington

66th Legislature

2019 Regular Session

By Senator O'Ban

Prefiled 12/24/18.

1 AN ACT Relating to adjusting the duration of competency
2 restoration treatment based on risk; amending RCW 10.77.060,
3 10.77.084, 10.77.086, 10.77.088, 10.77.065, and 71.05.235; and adding
4 a new section to chapter 10.77 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.77
7 RCW to read as follows:

8 (1) For each defendant determined to be incompetent under RCW
9 10.77.086 or 10.77.088, the court must determine the available
10 competency restoration treatment period using the calculation
11 described in the following table:

12 **Available Competency Restoration Treatment Period Calculation Table**

Current Charges	Score A (select only one number)
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Nonfelony offense, or felony escalator offense, meaning conduct which would be a nonfelony offense but for the occupational status of the alleged victim under RCW 9A.36.031(1) (b), (c), (e), (g), (i), (j), or (k).	1
Nonviolent felony offense, excluding felony escalator offenses or felony sex offenses.	2
Violent offense or felony sex offense under RCW 9.94A.030, excluding serious violent offenses .	3
Serious violent offense under RCW 9.94A.030.	4
Criminal History	Score B (select only one number)
Nonfelony offense, nonviolent felony offense other than a felony sex offense, or no criminal history.	0
Violent offense or felony sex offense under RCW 9.94A.030, excluding serious violent offenses.	1
Serious violent offense under RCW 9.94A.030.	2
Total Score (sum of score A and score B, a number from 1 to 6):	

27 **Instructions for score A:** Select the number that corresponds to the
28 category containing the highest level offense included among the
29 defendant's current charges.

30 **Instructions for score B:** Select the number that corresponds to the
31 category containing the highest level offense included among the
32 defendant's criminal history that may be counted under subsection (2)
33 of this section, including charges acquitted by reason of insanity or
34 dismissed without prejudice due to incompetency to stand trial under
35 chapter 10.77 RCW.

1 **Instructions for total score:** The total score is the sum of score A
2 and score B, a number from 1 to 6.

3 **Available Competency Restoration Treatment Period**

4 Total score of 1: No competency restoration treatment period allowed.

5 Total score of 2: One competency restoration treatment period of up
6 to sixty days.

7 Total score of 3: One competency restoration treatment period of up
8 to sixty days, followed by a second period of up to ninety days.

9 Total score of 4 through 6: One competency restoration treatment
10 period of up to sixty days, followed by a second period of up to
11 ninety days, followed by a third period of up to one hundred eighty
12 days.

13 (2) When calculating the available competency restoration
14 treatment period under this section, an offense may be counted as
15 criminal history if the charges resulted in conviction, acquittal by
16 reason of insanity, or dismissal without prejudice under this chapter
17 based on incompetency to stand trial, except as provided below.

18 (a) Class B prior felonies may not be counted if since the last
19 date of release from confinement (including full-time residential
20 treatment) pursuant to the felony charge the defendant has spent ten
21 consecutive years in the community without committing any crime that
22 results in conviction, acquittal by reason of insanity, or dismissal
23 without prejudice based on incompetency to stand trial.

24 (b) Class C prior felonies may not be counted if since the last
25 date of release from confinement (including full-time residential
26 treatment) pursuant to the felony charge the defendant has spent five
27 consecutive years in the community without committing any crime that
28 results in conviction, acquittal by reason of insanity, or dismissal
29 without prejudice based on incompetency to stand trial.

30 (3) The court may increase the total score used for the
31 calculation of the available competency restoration treatment period
32 by one point upon motion by the prosecuting attorney if the court
33 determines that the defendant's current charges and criminal history
34 do not adequately convey the risk presented by the defendant, based
35 on one or more of the following factors:

36 (a) The extent of the impact of the alleged offense on the basic
37 human need for security of the citizens within the jurisdiction;

1 (b) The number and nature of related charges pending against the
2 defendant;

3 (c) The length of potential confinement if the defendant is
4 convicted; or

5 (d) The number of potential and actual victims or persons
6 impacted by the defendant's alleged acts.

7 **Sec. 2.** RCW 10.77.060 and 2016 sp.s. c 29 s 408 are each amended
8 to read as follows:

9 (1)(a) Whenever a defendant has pleaded not guilty by reason of
10 insanity, or there is reason to doubt his or her competency, the
11 court on its own motion or on the motion of any party shall either
12 appoint or request the secretary to designate a qualified expert or
13 professional person, who shall be approved by the prosecuting
14 attorney, to evaluate and report upon the mental condition of the
15 defendant.

16 (b) The signed order of the court shall serve as authority for
17 the evaluator to be given access to all records held by any mental
18 health, medical, educational, or correctional facility that relate to
19 the present or past mental, emotional, or physical condition of the
20 defendant. If the court is advised by any party that the defendant
21 may have a developmental disability, the evaluation must be performed
22 by a developmental disabilities professional.

23 (c) The evaluator shall assess the defendant in a jail, detention
24 facility, in the community, or in court to determine whether a period
25 of inpatient commitment will be necessary to complete an accurate
26 evaluation. If inpatient commitment is needed, the signed order of
27 the court shall serve as authority for the evaluator to request the
28 jail or detention facility to transport the defendant to a hospital
29 or secure mental health facility for a period of commitment not to
30 exceed fifteen days from the time of admission to the facility.
31 Otherwise, the evaluator shall complete the evaluation.

32 (d) The court may commit the defendant for evaluation to a
33 hospital or secure mental health facility without an assessment if:

34 (i) The defendant is charged with murder in the first or second
35 degree; (ii) the court finds that it is more likely than not that an
36 evaluation in the jail will be inadequate to complete an accurate
37 evaluation; or (iii) the court finds that an evaluation outside the
38 jail setting is necessary for the health, safety, or welfare of the

1 defendant. The court shall not order an initial inpatient evaluation
2 for any purpose other than a competency evaluation.

3 (e) The order shall indicate whether, in the event the defendant
4 is committed to a hospital or secure mental health facility for
5 evaluation, all parties agree to waive the presence of the defendant
6 or to the defendant's remote participation at a subsequent competency
7 hearing or presentation of an agreed order if the recommendation of
8 the evaluator is for continuation of the stay of criminal
9 proceedings, or if the opinion of the evaluator is that the defendant
10 remains incompetent and there is no remaining restoration period, and
11 the hearing is held prior to the expiration of the authorized
12 commitment period.

13 (f) When a defendant is ordered to be committed for inpatient
14 evaluation under this subsection (1), the court may delay granting
15 bail until the defendant has been evaluated for competency or sanity
16 and appears before the court. Following the evaluation, in
17 determining bail the court shall consider: (i) Recommendations of the
18 evaluator regarding the defendant's competency, sanity, or diminished
19 capacity; (ii) whether the defendant has a recent history of one or
20 more violent acts; (iii) whether the defendant has previously been
21 acquitted by reason of insanity or found incompetent; (iv) whether it
22 is reasonably likely the defendant will fail to appear for a future
23 court hearing; and (v) whether the defendant is a threat to public
24 safety.

25 (2) The court may direct that a qualified expert or professional
26 person retained by or appointed for the defendant be permitted to
27 witness the evaluation authorized by subsection (1) of this section,
28 and that the defendant shall have access to all information obtained
29 by the court appointed experts or professional persons. The
30 defendant's expert or professional person shall have the right to
31 file his or her own report following the guidelines of subsection (3)
32 of this section. If the defendant is indigent, the court shall upon
33 the request of the defendant assist him or her in obtaining an expert
34 or professional person.

35 (3) The report of the evaluation shall include the following:

36 (a) A description of the nature of the evaluation;

37 (b) A diagnosis or description of the current mental status of
38 the defendant;

39 (c) If the defendant suffers from a mental disease or defect, or
40 has a developmental disability, an opinion as to competency;

1 (d) If the defendant has indicated his or her intention to rely
2 on the defense of insanity pursuant to RCW 10.77.030, and an
3 evaluation and report by an expert or professional person has been
4 provided concluding that the defendant was criminally insane at the
5 time of the alleged offense, an opinion as to the defendant's sanity
6 at the time of the act, and an opinion as to whether the defendant
7 presents a substantial danger to other persons, or presents a
8 substantial likelihood of committing criminal acts jeopardizing
9 public safety or security, unless kept under further control by the
10 court or other persons or institutions, provided that no opinion
11 shall be rendered under this subsection (3)(d) unless the evaluator
12 or court determines that the defendant is competent to stand trial;

13 (e) When directed by the court, if an evaluation and report by an
14 expert or professional person has been provided concluding that the
15 defendant lacked the capacity at the time of the offense to form the
16 mental state necessary to commit the charged offense, an opinion as
17 to the capacity of the defendant to have a particular state of mind
18 which is an element of the offense charged;

19 (f) An opinion as to whether the defendant should be evaluated by
20 a designated crisis responder under chapter 71.05 RCW; and

21 (g) To assist the court, an advisory calculation of the available
22 competency restoration treatment period under section 1 of this act
23 if the defendant is found incompetent to stand trial.

24 (4) The secretary may execute such agreements as appropriate and
25 necessary to implement this section and may choose to designate more
26 than one evaluator.

27 **Sec. 3.** RCW 10.77.084 and 2016 sp.s. c 29 s 410 are each amended
28 to read as follows:

29 (1)(a) If at any time during the pendency of an action and prior
30 to judgment the court finds, following a report as provided in RCW
31 10.77.060, a defendant is incompetent, the court shall order the
32 proceedings against the defendant be stayed except as provided in
33 subsection (4) of this section.

34 (b) The court may order a defendant who has been found to be
35 incompetent to undergo competency restoration treatment at a facility
36 designated by the department if the defendant is eligible under RCW
37 10.77.086 (~~(e)~~), 10.77.088, or section 1 of this act. At the end of
38 each competency restoration period or at any time a professional
39 person determines competency has been, or is unlikely to be,

1 restored, the defendant shall be returned to court for a hearing,
2 except that if the opinion of the professional person is that the
3 defendant remains incompetent and the hearing is held before the
4 expiration of the current competency restoration period, the parties
5 may agree to waive the defendant's presence, to remote participation
6 by the defendant at a hearing, or to presentation of an agreed order
7 in lieu of a hearing. The facility shall promptly notify the court
8 and all parties of the date on which the competency restoration
9 period commences and expires so that a timely hearing date may be
10 scheduled.

11 (c) If, following notice and hearing or entry of an agreed order
12 under (b) of this subsection, the court finds that competency has
13 been restored, the court shall lift the stay entered under (a) of
14 this subsection. If the court finds that competency has not been
15 restored, the court shall dismiss the proceedings without prejudice,
16 except that the court may order a further period of competency
17 restoration treatment if it finds that a further competency
18 restoration treatment (~~((within the time limits established by RCW~~
19 ~~10.77.086 or 10.77.088))~~ period is available under section 1 of this
20 act, that further competency restoration is likely to restore
21 competency, and a further period of treatment is (~~(allowed)~~) not
22 prohibited under RCW 10.77.086 or 10.77.088.

23 (d) If at any time during the proceeding the court finds,
24 following notice and hearing, a defendant is not likely to regain
25 competency, the court shall dismiss the proceedings without prejudice
26 and refer the defendant for civil commitment evaluation or
27 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
28 10.77.088.

29 (2) If the defendant is referred for evaluation by a designated
30 crisis responder under this chapter, the designated crisis responder
31 shall provide prompt written notification of the results of the
32 evaluation and whether the person was detained. The notification
33 shall be provided to the court in which the criminal action was
34 pending, the prosecutor, the defense attorney in the criminal action,
35 and the facility that evaluated the defendant for competency.

36 (3) The fact that the defendant is unfit to proceed does not
37 preclude any pretrial proceedings which do not require the personal
38 participation of the defendant.

39 (4) A defendant receiving medication for either physical or
40 mental problems shall not be prohibited from standing trial, if the

1 medication either enables the defendant to understand the proceedings
2 against him or her and to assist in his or her own defense, or does
3 not disable him or her from so understanding and assisting in his or
4 her own defense.

5 (5) At or before the conclusion of any commitment period provided
6 for by this section, the facility providing evaluation and treatment
7 shall provide to the court a written report of evaluation which meets
8 the requirements of RCW 10.77.060(3). For defendants charged with a
9 felony, the report (~~((following the second competency restoration
10 period or first competency restoration period if the defendant's
11 incompetence is determined to be solely due to a developmental
12 disability or the evaluator concludes that the defendant is not
13 likely to regain competency))~~) must include an assessment of the
14 defendant's future dangerousness (~~((which))~~) that is evidence-based
15 regarding predictive validity if:

16 (a) The current competency restoration treatment period is the
17 last competency restoration treatment period available under section
18 1 of this act;

19 (b) During the current competency restoration treatment period,
20 the facility determines that the defendant is incompetent and the
21 defendant's incompetence is solely due to a developmental disability;

22 (c) During the current competency restoration treatment period,
23 the facility determines that the defendant is incompetent and the
24 defendant is not likely to regain competency during any remaining
25 available competency restoration treatment period; or

26 (d) The current competency restoration treatment period is the
27 last period available before a court or jury must determine whether
28 to commit the defendant to a final one hundred eighty-day treatment
29 period under RCW 10.77.086(3)(d).

30 **Sec. 4.** RCW 10.77.086 and 2015 1st sp.s. c 7 s 5 are each
31 amended to read as follows:

32 (1) ~~((a)-(i))~~ If the defendant is charged with a felony and
33 determined to be incompetent, until he or she has regained the
34 competency necessary to understand the proceedings against him or her
35 and assist in his or her own defense, but in any event for ~~((a period~~
36 ~~of))~~ no longer than ~~((ninety days))~~ the available competency
37 restoration treatment period or periods under section 1 of this act,
38 the court:

1 ~~((A))~~ (a) Shall commit the defendant to the custody of the
2 secretary who shall place such defendant in an appropriate facility
3 of the department for evaluation and treatment; or

4 ~~((B))~~ (b) May alternatively order the defendant to undergo
5 evaluation and treatment at some other facility or provider as
6 determined by the department, or under the guidance and control of a
7 professional person. The facilities or providers may include
8 community mental health providers or other local facilities that
9 contract with the department and are willing and able to provide
10 treatment under this section. ~~((During the 2015-2017 fiscal biennium,~~
11 ~~the department may contract with one or more cities or counties to~~
12 ~~provide competency restoration services in a city or county jail if~~
13 ~~the city or county jail is willing and able to serve as a location~~
14 ~~for competency restoration services and if the secretary determines~~
15 ~~that there is an emergent need for beds and documents the~~
16 ~~justification, including a plan to address the emergency. Patients~~
17 ~~receiving competency restoration services in a city or county jail~~
18 ~~must be physically separated from other populations at the jail and~~
19 ~~restoration treatment services must be provided as much as possible~~
20 ~~within a therapeutic environment.~~

21 ~~(ii))~~ (2) The ~~((ninety day period for evaluation and))~~ available
22 periods of competency restoration treatment under ~~((this))~~ subsection
23 (1) ~~((includes))~~ of this section include only the time the defendant
24 is actually at the facility and is in addition to reasonable time for
25 transport to or from the facility~~((-~~

26 ~~(b)~~ For a defendant whose highest charge is a class C felony, or
27 a class B felony that is not classified as violent under RCW
28 9.94A.030, the maximum time allowed for the initial period of
29 commitment for competency restoration is forty-five days. The forty-
30 five day period includes only the time the defendant is actually at
31 the facility and is in addition to reasonable time for transport to
32 or from the facility.

33 ~~(c)~~ If the court determines or the parties agree that the
34 defendant is unlikely to regain competency, the court may dismiss the
35 charges without prejudice without ordering the defendant to undergo
36 restoration treatment, in which case the court shall order that the
37 defendant be referred for evaluation for civil commitment in the
38 manner provided in subsection (4) of this section).

39 ~~((2))~~ (3) On or before expiration of ~~((the initial))~~ any period
40 of commitment under subsection (1) of this section the court shall

1 conduct a hearing, at which it shall determine whether or not the
2 defendant is incompetent.

3 ~~((3) If the court finds))~~ (a) The burden of proof is upon the
4 state to establish by a preponderance of the evidence that a
5 defendant charged with a felony is incompetent(~~(, the court shall~~
6 ~~have the option of extending the order of commitment or alternative~~
7 ~~treatment for an additional period of ninety days, but the court must~~
8 ~~at the time of extension set a date for a prompt hearing to determine~~
9 ~~the defendant's competency before the expiration of the second~~
10 ~~restoration period)). The defendant, the defendant's attorney, or the~~
11 prosecutor has the right to demand that the hearing be before a jury.

12 (b) If the court or jury determines or the parties agree that the
13 defendant is unlikely to regain competency at any stage, the court
14 must dismiss the charges without prejudice without a further order
15 for competency restoration treatment and instead order that the
16 defendant be referred for evaluation for civil commitment in the
17 manner provided under subsection (4) of this section.

18 (c) No extension beyond the initial competency restoration
19 treatment period shall be ordered (~~for a second or third restoration~~
20 ~~period as provided in subsection (4) of this section)) if the
21 defendant's incompetence has been determined by the secretary to be
22 solely the result of a developmental disability which is such that
23 competence is not reasonably likely to be regained during an
24 extension. (~~The ninety-day period includes only the time the~~
25 ~~defendant is actually at the facility and is in addition to~~
26 ~~reasonable time for transport to or from the facility.))~~~~

27 (d) No final one hundred eighty-day period of competency
28 restoration treatment shall be ordered unless the court or jury finds
29 that: (i) The defendant (A) is a substantial danger to other persons;
30 or (B) presents a substantial likelihood of committing criminal acts
31 jeopardizing public safety or security; and (ii) there is a
32 substantial probability that the defendant will regain competency
33 within a reasonable period of time.

34 (4) For persons charged with a felony, at the hearing upon the
35 expiration of the (~~second restoration period~~) available competency
36 restoration treatment period or periods under section 1 of this act
37 or (~~at the end of the first restoration period in the case of a~~
38 ~~defendant with a developmental disability~~) at any earlier stage when
39 dismissal without prejudice is required under this section, if the
40 jury or court finds that the defendant is incompetent(~~(, or if the~~

1 ~~court or jury at any stage finds that the defendant is incompetent~~
2 ~~and the court determines that the defendant is unlikely to regain~~
3 ~~competency)), the court shall dismiss the charges (~~shall be~~
4 ~~dismissed~~) without prejudice(~~(7)~~) and (~~the court shall~~) order the
5 defendant be committed to a state hospital as defined in RCW
6 72.23.010 for up to seventy-two hours starting from admission to the
7 facility, excluding Saturdays, Sundays, and holidays, for evaluation
8 for the purpose of filing a civil commitment petition under chapter
9 71.05 RCW. (~~The criminal charges shall not be dismissed if the court~~
10 ~~or jury finds that: (a) The defendant (i) is a substantial danger to~~
11 ~~other persons; or (ii) presents a substantial likelihood of~~
12 ~~committing criminal acts jeopardizing public safety or security; and~~
13 ~~(b) there is a substantial probability that the defendant will regain~~
14 ~~competency within a reasonable period of time. In the event that the~~
15 ~~court or jury makes such a finding, the court may extend the period~~
16 ~~of commitment for up to an additional six months. The six-month~~
17 ~~period includes only the time the defendant is actually at the~~
18 ~~facility and is in addition to reasonable time for transport to or~~
19 ~~from the facility.))~~~~

20 **Sec. 5.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended
21 to read as follows:

22 (1) (a) If the defendant is charged with a nonfelony crime (~~which~~
23 ~~is a serious offense as identified in RCW 10.77.092 and found by the~~
24 ~~court to be not competent, then)), the court, for no longer than the
25 available competency restoration treatment period, if any, under
26 section 1 of this act:~~

27 (i) Shall commit the defendant to the custody of the secretary
28 who shall place such defendant in an appropriate facility of the
29 department for (~~evaluation and~~) competency restoration treatment;

30 (ii) May alternatively order the defendant to undergo
31 (~~evaluation and~~) competency restoration treatment at some other
32 facility or provider as determined by the department, or under the
33 guidance and control of a professional person. The facilities or
34 providers may include community mental health providers or other
35 local facilities that contract with the department and are willing
36 and able to provide treatment under this section(~~(. During the~~
37 ~~2015-2017 fiscal biennium, the department may contract with one or~~
38 ~~more cities or counties to provide competency restoration services in~~
39 ~~a city or county jail if the city or county jail is willing and able~~

1 ~~to serve as a location for competency restoration services and if the~~
2 ~~secretary determines that there is an emergent need for beds and~~
3 ~~documents the justification, including a plan to address the~~
4 ~~emergency. Patients receiving competency restoration services in a~~
5 ~~city or county jail must be physically separated from other~~
6 ~~populations at the jail and restoration treatment services must be~~
7 ~~provided as much as possible within a therapeutic environment. The~~
8 ~~placement under (a) (i) and (ii) of this subsection shall not exceed~~
9 ~~fourteen days in addition to any unused time of the evaluation under~~
10 ~~RCW 10.77.060. The court shall compute this total period and include~~
11 ~~its computation in the order.)~~;

12 (iii) May alternatively order that the defendant be placed on
13 conditional release for mental health and competency restoration
14 treatment.

15 (b) If the court determines or the parties agree that the
16 defendant is unlikely to regain competency, the court may dismiss the
17 charges without prejudice without ordering the defendant to undergo
18 competency restoration treatment, in which case the court shall order
19 that the defendant be referred for evaluation for civil commitment in
20 the manner provided in subsection (3) of this section.

21 (2) The ((fourteen-day)) available competency restoration
22 treatment period ((plus any unused time of the evaluation under RCW
23 10.77.060)) shall be considered to include only the time the
24 defendant is actually at the facility and shall be in addition to
25 reasonable time for transport to or from the facility((

26 ~~(iii) May alternatively order that the defendant be placed on~~
27 ~~conditional release for up to ninety days for mental health treatment~~
28 ~~and restoration of competency; or~~

29 ~~(iv) May order any combination of this subsection.~~

30 ~~(b) If the court has determined or the parties agree that the~~
31 ~~defendant is unlikely to regain competency, the court may dismiss the~~
32 ~~charges without prejudice without ordering the defendant to undergo~~
33 ~~restoration treatment, in which case the court shall order that the~~
34 ~~defendant be referred for evaluation for civil commitment in the~~
35 ~~manner provided in (c) of this subsection)).~~

36 ~~((c) (i))~~ (3) If the ((proceedings are dismissed under RCW
37 10.77.084 and)) defendant is found incompetent and there is no
38 available competency restoration period, the available competency
39 restoration treatment period has expired, or there is an available
40 competency restoration period but the court determines that the

1 defendant is unlikely to regain competency under subsection (1)(b) of
2 this section, the court must dismiss the charges without prejudice
3 and enter one of the following orders:

4 (a) If the defendant ((was)) is on conditional release at the
5 time of dismissal, the court shall order the designated crisis
6 responder within that county to evaluate the defendant pursuant to
7 chapter 71.05 RCW. The evaluation may be conducted in any location
8 chosen by the professional.

9 ~~((+ii))~~ (b) If the defendant ((was)) is in custody ((and not on
10 ~~conditional release at the time of dismissal)) and is charged with a
11 nonfelony which is a serious offense under RCW 10.77.092, the court
12 shall detain the defendant ((shall be detained and sent)) to an
13 evaluation and treatment facility for up to seventy-two hours,
14 excluding Saturdays, Sundays, and holidays, for evaluation for
15 purposes of filing a petition under chapter 71.05 RCW. The seventy-
16 two hour period shall commence upon the next nonholiday weekday
17 following the court order and shall run to the end of the last
18 nonholiday weekday within the seventy-two-hour period.~~

19 ~~((+2))~~ (c) If the defendant is in custody and is charged with a
20 nonfelony ((crime)) that is not a serious offense ((as defined in))
21 under RCW 10.77.092((+)), the court ((may stay or dismiss proceedings
22 ~~and)) shall detain the defendant for sufficient time to allow the
23 designated crisis responder to evaluate the defendant and consider
24 initial detention proceedings under chapter 71.05 RCW. The court must
25 give notice to all parties at least twenty-four hours before the
26 dismissal of any proceeding under this subsection, and provide an
27 opportunity for a hearing on whether to dismiss the proceedings.~~

28 **Sec. 6.** RCW 10.77.065 and 2016 sp.s. c 29 s 409 are each amended
29 to read as follows:

30 (1)(a)(i) The expert conducting the evaluation shall provide his
31 or her report and recommendation to the court in which the criminal
32 proceeding is pending. For a competency evaluation of a defendant who
33 is released from custody, if the evaluation cannot be completed
34 within twenty-one days due to a lack of cooperation by the defendant,
35 the evaluator shall notify the court that he or she is unable to
36 complete the evaluation because of such lack of cooperation.

37 (ii) A copy of the report and recommendation shall be provided to
38 the designated crisis responder, the prosecuting attorney, the
39 defense attorney, and the professional person at the local

1 correctional facility where the defendant is being held, or if there
2 is no professional person, to the person designated under (a)(iv) of
3 this subsection. Upon request, the evaluator shall also provide
4 copies of any source documents relevant to the evaluation to the
5 designated crisis responder.

6 (iii) Any facility providing inpatient services related to
7 competency shall discharge the defendant as soon as the facility
8 determines that the defendant is competent to stand trial. Discharge
9 shall not be postponed during the writing and distribution of the
10 evaluation report. Distribution of an evaluation report by a facility
11 providing inpatient services shall ordinarily be accomplished within
12 two working days or less following the final evaluation of the
13 defendant. If the defendant is discharged to the custody of a local
14 correctional facility, the local correctional facility must continue
15 the medication regimen prescribed by the facility, when clinically
16 appropriate, unless the defendant refuses to cooperate with
17 medication and an involuntary medication order by the court has not
18 been entered.

19 (iv) If there is no professional person at the local correctional
20 facility, the local correctional facility shall designate a
21 professional person as defined in RCW 71.05.020 or, in cooperation
22 with the behavioral health organization, a professional person at the
23 behavioral health organization to receive the report and
24 recommendation.

25 (v) Upon commencement of a defendant's evaluation in the local
26 correctional facility, the local correctional facility must notify
27 the evaluator of the name of the professional person, or person
28 designated under (a)(iv) of this subsection, to receive the report
29 and recommendation.

30 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
31 person should be evaluated by a designated crisis responder under
32 chapter 71.05 RCW, the court shall order such evaluation be conducted
33 prior to release from confinement when the person is acquitted or
34 convicted and sentenced to confinement for twenty-four months or
35 less, or when charges are dismissed pursuant to a finding of
36 incompetent to stand trial.

37 (2) The designated crisis responder shall provide written
38 notification within twenty-four hours of the results of the
39 determination whether to commence proceedings under chapter 71.05

1 RCW. The notification shall be provided to the persons identified in
2 subsection (1) (a) of this section.

3 (3) The prosecuting attorney shall provide a copy of the results
4 of any proceedings commenced by the designated crisis responder under
5 subsection (2) of this section to the secretary.

6 (4) A facility conducting a civil commitment evaluation under RCW
7 10.77.086(4) or 10.77.088(~~((1)(e)(ii))~~) (3) that makes a
8 determination to release the person instead of filing a civil
9 commitment petition must provide written notice to the prosecutor and
10 defense attorney at least twenty-four hours prior to release. The
11 notice may be given by email, facsimile, or other means reasonably
12 likely to communicate the information immediately.

13 (5) The fact of admission and all information and records
14 compiled, obtained, or maintained in the course of providing services
15 under this chapter may also be disclosed to the courts solely to
16 prevent the entry of any evaluation or treatment order that is
17 inconsistent with any order entered under chapter 71.05 RCW.

18 **Sec. 7.** RCW 71.05.235 and 2016 sp.s. c 29 s 231 are each amended
19 to read as follows:

20 (1) If an individual is referred to a designated crisis responder
21 under RCW 10.77.088(~~((1)(e)(i))~~) (3), the designated crisis responder
22 shall examine the individual within forty-eight hours. If the
23 designated crisis responder determines it is not appropriate to
24 detain the individual or petition for a ninety-day less restrictive
25 alternative under RCW 71.05.230(4), that decision shall be
26 immediately presented to the superior court for hearing. The court
27 shall hold a hearing to consider the decision of the designated
28 crisis responder not later than the next judicial day. At the hearing
29 the superior court shall review the determination of the designated
30 crisis responder and determine whether an order should be entered
31 requiring the person to be evaluated at an evaluation and treatment
32 facility. No person referred to an evaluation and treatment facility
33 may be held at the facility longer than seventy-two hours.

34 (2) If an individual is placed in an evaluation and treatment
35 facility under RCW 10.77.088(~~((1)(e)(ii))~~) (3), a professional person
36 shall evaluate the individual for purposes of determining whether to
37 file a ninety-day inpatient or outpatient petition under this
38 chapter. Before expiration of the seventy-two hour evaluation period
39 authorized under RCW 10.77.088(~~((1)(e)(ii))~~) (3), the professional

1 person shall file a petition or, if the recommendation of the
2 professional person is to release the individual, present his or her
3 recommendation to the superior court of the county in which the
4 criminal charge was dismissed. The superior court shall review the
5 recommendation not later than forty-eight hours, excluding Saturdays,
6 Sundays, and holidays, after the recommendation is presented. If the
7 court rejects the recommendation to unconditionally release the
8 individual, the court may order the individual detained at a
9 designated evaluation and treatment facility for not more than a
10 seventy-two hour evaluation and treatment period and direct the
11 individual to appear at a surety hearing before that court within
12 seventy-two hours, or the court may release the individual but direct
13 the individual to appear at a surety hearing set before that court
14 within eleven days, at which time the prosecutor may file a petition
15 under this chapter for ninety-day inpatient or outpatient treatment.
16 If a petition is filed by the prosecutor, the court may order that
17 the person named in the petition be detained at the evaluation and
18 treatment facility that performed the evaluation under this
19 subsection or order the respondent to be in outpatient treatment. If
20 a petition is filed but the individual fails to appear in court for
21 the surety hearing, the court shall order that a mental health
22 professional or peace officer shall take such person or cause such
23 person to be taken into custody and placed in an evaluation and
24 treatment facility to be brought before the court the next judicial
25 day after detention. Upon the individual's first appearance in court
26 after a petition has been filed, proceedings under RCW 71.05.310 and
27 71.05.320 shall commence. For an individual subject to this
28 subsection, the prosecutor or professional person may directly file a
29 petition for ninety-day inpatient or outpatient treatment and no
30 petition for initial detention or fourteen-day detention is required
31 before such a petition may be filed.

32 The court shall conduct the hearing on the petition filed under
33 this subsection within five judicial days of the date the petition is
34 filed. The court may continue the hearing upon the written request of
35 the person named in the petition or the person's attorney, for good
36 cause shown, which continuance shall not exceed five additional
37 judicial days. If the person named in the petition requests a jury
38 trial, the trial shall commence within ten judicial days of the date
39 of the filing of the petition. The burden of proof shall be by clear,
40 cogent, and convincing evidence and shall be upon the petitioner. The

1 person shall be present at such proceeding, which shall in all
2 respects accord with the constitutional guarantees of due process of
3 law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

4 During the proceeding the person named in the petition shall
5 continue to be detained and treated until released by order of the
6 court. If no order has been made within thirty days after the filing
7 of the petition, not including any extensions of time requested by
8 the detained person or his or her attorney, the detained person shall
9 be released.

10 (3) If a designated crisis responder or the professional person
11 and prosecuting attorney for the county in which the criminal charge
12 was dismissed or attorney general, as appropriate, stipulate that the
13 individual does not present a likelihood of serious harm or is not
14 gravely disabled, the hearing under this section is not required and
15 the individual, if in custody, shall be released.

16 (4) The individual shall have the rights specified in RCW
17 71.05.360 (8) and (9).

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