
SECOND SUBSTITUTE SENATE BILL 5664

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

State of Washington **67th Legislature** **2022 Regular Session**

By Senate Ways & Means (originally sponsored by Senators Dhingra, Keiser, and Nobles)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to forensic competency restoration programs;
2 amending RCW 10.77.060, 10.77.068, 10.77.086, 10.77.088, and
3 10.77.250; reenacting and amending RCW 10.77.010; adding new sections
4 to chapter 10.77 RCW; and declaring an emergency.

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

6 **Sec. 1.** RCW 10.77.010 and 2021 c 263 s 9 are each reenacted and
7 amended to read as follows:

8 As used in this chapter:

9 (1) "Admission" means acceptance based on medical necessity, of a
10 person as a patient.

11 (2) "Commitment" means the determination by a court that a person
12 should be detained for a period of either evaluation or treatment, or
13 both, in an inpatient or a less-restrictive setting.

14 (3) "Community behavioral health agency" has the same meaning as
15 "licensed or certified behavioral health agency" defined in RCW
16 71.24.025.

17 (4) "Conditional release" means modification of a court-ordered
18 commitment, which may be revoked upon violation of any of its terms.

19 (5) A "criminally insane" person means any person who has been
20 acquitted of a crime charged by reason of insanity, and thereupon
21 found to be a substantial danger to other persons or to present a

1 substantial likelihood of committing criminal acts jeopardizing
2 public safety or security unless kept under further control by the
3 court or other persons or institutions.

4 (6) "Department" means the state department of social and health
5 services.

6 (7) "Designated crisis responder" has the same meaning as
7 provided in RCW 71.05.020.

8 (8) "Detention" or "detain" means the lawful confinement of a
9 person, under the provisions of this chapter, pending evaluation.

10 (9) "Developmental disabilities professional" means a person who
11 has specialized training and three years of experience in directly
12 treating or working with persons with developmental disabilities and
13 is a psychiatrist or psychologist, or a social worker, and such other
14 developmental disabilities professionals as may be defined by rules
15 adopted by the secretary.

16 (10) "Developmental disability" means the condition as defined in
17 RCW 71A.10.020(5).

18 (11) "Discharge" means the termination of hospital medical
19 authority. The commitment may remain in place, be terminated, or be
20 amended by court order.

21 (12) "Furlough" means an authorized leave of absence for a
22 resident of a state institution operated by the department designated
23 for the custody, care, and treatment of the criminally insane,
24 consistent with an order of conditional release from the court under
25 this chapter, without any requirement that the resident be
26 accompanied by, or be in the custody of, any law enforcement or
27 institutional staff, while on such unescorted leave.

28 (13) "Habilitative services" means those services provided by
29 program personnel to assist persons in acquiring and maintaining life
30 skills and in raising their levels of physical, mental, social, and
31 vocational functioning. Habilitative services include education,
32 training for employment, and therapy. The habilitative process shall
33 be undertaken with recognition of the risk to the public safety
34 presented by the person being assisted as manifested by prior charged
35 criminal conduct.

36 (14) "History of one or more violent acts" means violent acts
37 committed during: (a) The ten-year period of time prior to the filing
38 of criminal charges; plus (b) the amount of time equal to time spent
39 during the ten-year period in a mental health facility or in
40 confinement as a result of a criminal conviction.

1 (15) "Immediate family member" means a spouse, child, stepchild,
2 parent, stepparent, grandparent, sibling, or domestic partner.

3 (16) "Incompetency" means a person lacks the capacity to
4 understand the nature of the proceedings against him or her or to
5 assist in his or her own defense as a result of mental disease or
6 defect.

7 (17) "Indigent" means any person who is financially unable to
8 obtain counsel or other necessary expert or professional services
9 without causing substantial hardship to the person or his or her
10 family.

11 (18) "Individualized service plan" means a plan prepared by a
12 developmental disabilities professional with other professionals as a
13 team, for an individual with developmental disabilities, which shall
14 state:

15 (a) The nature of the person's specific problems, prior charged
16 criminal behavior, and habilitation needs;

17 (b) The conditions and strategies necessary to achieve the
18 purposes of habilitation;

19 (c) The intermediate and long-range goals of the habilitation
20 program, with a projected timetable for the attainment;

21 (d) The rationale for using this plan of habilitation to achieve
22 those intermediate and long-range goals;

23 (e) The staff responsible for carrying out the plan;

24 (f) Where relevant in light of past criminal behavior and due
25 consideration for public safety, the criteria for proposed movement
26 to less-restrictive settings, criteria for proposed eventual release,
27 and a projected possible date for release; and

28 (g) The type of residence immediately anticipated for the person
29 and possible future types of residences.

30 (19) "Professional person" means:

31 (a) A psychiatrist licensed as a physician and surgeon in this
32 state who has, in addition, completed three years of graduate
33 training in psychiatry in a program approved by the American medical
34 association or the American osteopathic association and is certified
35 or eligible to be certified by the American board of psychiatry and
36 neurology or the American osteopathic board of neurology and
37 psychiatry;

38 (b) A psychologist licensed as a psychologist pursuant to chapter
39 18.83 RCW; ((~~or~~))

1 (c) A psychiatric advanced registered nurse practitioner, as
2 defined in RCW 71.05.020; or

3 (d) A social worker with a master's or further advanced degree
4 from a social work educational program accredited and approved as
5 provided in RCW 18.320.010.

6 (20) "Release" means legal termination of the court-ordered
7 commitment under the provisions of this chapter.

8 (21) "Secretary" means the secretary of the department of social
9 and health services or his or her designee.

10 (22) "Treatment" means any currently standardized medical or
11 mental health procedure including medication.

12 (23) "Treatment records" include registration and all other
13 records concerning persons who are receiving or who at any time have
14 received services for mental illness, which are maintained by the
15 department, by behavioral health administrative services
16 organizations and their staffs, by managed care organizations and
17 their staffs, and by treatment facilities. Treatment records do not
18 include notes or records maintained for personal use by a person
19 providing treatment services for the department, behavioral health
20 administrative services organizations, managed care organizations, or
21 a treatment facility if the notes or records are not available to
22 others.

23 (24) "Violent act" means behavior that: (a) (i) Resulted in; (ii)
24 if completed as intended would have resulted in; or (iii) was
25 threatened to be carried out by a person who had the intent and
26 opportunity to carry out the threat and would have resulted in,
27 homicide, nonfatal injuries, or substantial damage to property; or
28 (b) recklessly creates an immediate risk of serious physical injury
29 to another person. As used in this subsection, "nonfatal injuries"
30 means physical pain or injury, illness, or an impairment of physical
31 condition. "Nonfatal injuries" shall be construed to be consistent
32 with the definition of "bodily injury," as defined in RCW 9A.04.110.

33 (25) "Authority" means the Washington state health care
34 authority.

35 **Sec. 2.** RCW 10.77.060 and 2021 c 263 s 5 are each amended to
36 read as follows:

37 (1) (a) Whenever a defendant has pleaded not guilty by reason of
38 insanity, or there is reason to doubt his or her competency, the
39 court on its own motion or on the motion of any party shall either

1 appoint or request the secretary to designate a qualified expert or
2 professional person, who shall be approved by the prosecuting
3 attorney, to evaluate and report upon the mental condition of the
4 defendant.

5 (b) The signed order of the court shall serve as authority for
6 the evaluator to be given access to all records held by any mental
7 health, medical, educational, or correctional facility that relate to
8 the present or past mental, emotional, or physical condition of the
9 defendant. If the court is advised by any party that the defendant
10 may have a developmental disability, the evaluation must be performed
11 by a developmental disabilities professional and the evaluator shall
12 have access to records of the developmental disabilities
13 administration of the department.

14 (c) The evaluator shall assess the defendant in a jail, detention
15 facility, in the community, or in court to determine whether a period
16 of inpatient commitment will be necessary to complete an accurate
17 evaluation. If inpatient commitment is needed, the signed order of
18 the court shall serve as authority for the evaluator to request the
19 jail or detention facility to transport the defendant to a hospital
20 or secure mental health facility for a period of commitment not to
21 exceed fifteen days from the time of admission to the facility.
22 Otherwise, the evaluator shall complete the evaluation.

23 (d) The court may commit the defendant for evaluation to a
24 hospital or secure mental health facility without an assessment if:
25 (i) The defendant is charged with murder in the first or second
26 degree; (ii) the court finds that it is more likely than not that an
27 evaluation in the jail will be inadequate to complete an accurate
28 evaluation; or (iii) the court finds that an evaluation outside the
29 jail setting is necessary for the health, safety, or welfare of the
30 defendant. The court shall not order an initial inpatient evaluation
31 for any purpose other than a competency evaluation.

32 (e) The order shall indicate whether, in the event the defendant
33 is committed to a hospital or secure mental health facility for
34 evaluation, all parties agree to waive the presence of the defendant
35 or to the defendant's remote participation at a subsequent competency
36 hearing or presentation of an agreed order if the recommendation of
37 the evaluator is for continuation of the stay of criminal
38 proceedings, or if the opinion of the evaluator is that the defendant
39 remains incompetent and there is no remaining restoration period, and

1 the hearing is held prior to the expiration of the authorized
2 commitment period.

3 (f) When a defendant is ordered to be evaluated under this
4 subsection (1), or when a party or the court determines at first
5 appearance that an order for evaluation under this subsection will be
6 requested or ordered if charges are pursued, the court may delay
7 granting bail until the defendant has been evaluated for competency
8 or sanity and appears before the court. Following the evaluation, in
9 determining bail the court shall consider: (i) Recommendations of the
10 evaluator regarding the defendant's competency, sanity, or diminished
11 capacity; (ii) whether the defendant has a recent history of one or
12 more violent acts; (iii) whether the defendant has previously been
13 acquitted by reason of insanity or found incompetent; (iv) whether it
14 is reasonably likely the defendant will fail to appear for a future
15 court hearing; and (v) whether the defendant is a threat to public
16 safety.

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

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

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

29 (b) A diagnosis or description of the current mental status of
30 the defendant;

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

33 (d) If the defendant has indicated his or her intention to rely
34 on the defense of insanity pursuant to RCW 10.77.030, and an
35 evaluation and report by an expert or professional person has been
36 provided concluding that the defendant was criminally insane at the
37 time of the alleged offense, an opinion as to the defendant's sanity
38 at the time of the act, and an opinion as to whether the defendant
39 presents a substantial danger to other persons, or presents a
40 substantial likelihood of committing criminal acts jeopardizing

1 public safety or security, unless kept under further control by the
2 court or other persons or institutions, provided that no opinion
3 shall be rendered under this subsection (3)(d) unless the evaluator
4 or court determines that the defendant is competent to stand trial;

5 (e) When directed by the court, if an evaluation and report by an
6 expert or professional person has been provided concluding that the
7 defendant lacked the capacity at the time of the offense to form the
8 mental state necessary to commit the charged offense, an opinion as
9 to the capacity of the defendant to have a particular state of mind
10 which is an element of the offense charged;

11 (f) An opinion as to whether the defendant should be evaluated by
12 a designated crisis responder under chapter 71.05 RCW.

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

16 (5) In the event that a person remains in jail more than 21 days
17 after service on the department of a court order to transport the
18 person to a facility designated by the department for inpatient
19 competency restoration treatment, upon the request of any party and
20 with notice to all parties, the department shall perform a competency
21 to stand trial status check to determine if the circumstances of the
22 person have changed such that the court should authorize an updated
23 competency evaluation. The status update shall be provided to the
24 parties and the court. Status updates may be provided at reasonable
25 intervals.

26 **Sec. 3.** RCW 10.77.068 and 2015 c 5 s 1 are each amended to read
27 as follows:

28 (1)(a) The legislature establishes ~~((the following))~~ a
29 performance ~~((targets and maximum time limits for the timeliness of~~
30 ~~the completion of accurate and reliable evaluations of competency to~~
31 ~~stand trial and admissions for inpatient restoration services related~~
32 ~~to competency to proceed or stand trial for adult criminal~~
33 ~~defendants.))~~ target of seven days or fewer to extend an offer of
34 admission to a defendant in pretrial custody for inpatient competency
35 evaluation or inpatient competency restoration services, when access
36 to the services is legally authorized;

37 (b) The legislature establishes a performance target of 14 days
38 or fewer for the following services related to competency to stand
39 trial, when access to the services is legally authorized:

1 (i) To complete a competency evaluation in jail and distribute
2 the evaluation report; and

3 (ii) To extend an offer of admission to a defendant ordered to be
4 committed to a state hospital following dismissal of charges based on
5 incompetency to stand trial under RCW 10.77.086.

6 (c) The legislature establishes a performance target of 21 days
7 or fewer to complete a competency evaluation in the community and
8 distribute the evaluation report.

9 (2) (a) A maximum time limit of seven days as measured from the
10 department's receipt of the court order, or a maximum time limit of
11 14 days as measured from signature of the court order, whichever is
12 shorter, is established to complete the services specified in
13 subsection (1) (a) of this section, subject to the limitations under
14 subsection (9) of this section.

15 (b) A maximum time limit of 14 days as measured from the
16 department's receipt of the court order, or a maximum time limit of
17 21 days as measured from signature of the court order, whichever is
18 shorter, is established to complete the services specified in
19 subsection (1) (b) of this section, subject to the limitations under
20 subsection (9) of this section.

21 (3) The legislature recognizes that these targets may not be
22 achievable in all cases ((without compromise to the quality of
23 competency evaluation and restoration services)), but intends for the
24 department to manage, allocate, and request appropriations for
25 resources in order to meet these targets whenever possible without
26 sacrificing the accuracy and quality of competency ((evaluations and
27 restorations, and to otherwise make sustainable improvements and
28 track performance related to the timeliness of competency services:

29 ~~(i) For a state hospital to extend an offer of admission to a~~
30 ~~defendant in pretrial custody for legally authorized evaluation~~
31 ~~services related to competency, or to extend an offer of admission~~
32 ~~for legally authorized services following dismissal of charges based~~
33 ~~on incompetence to proceed or stand trial:~~

34 ~~(A) A performance target of seven days or less; and~~

35 ~~(B) A maximum time limit of fourteen days;~~

36 ~~(ii) For a state hospital to extend an offer of admission to a~~
37 ~~defendant in pretrial custody for legally authorized inpatient~~
38 ~~restoration treatment related to competency:~~

39 ~~(A) A performance target of seven days or less; and~~

40 ~~(B) A maximum time limit of fourteen days;~~

1 ~~(iii) For completion of a competency evaluation in jail and~~
2 ~~distribution of the evaluation report for a defendant in pretrial~~
3 ~~custody:~~

4 ~~(A) A performance target of seven days or less; and~~

5 ~~(B) A maximum time limit of fourteen days, plus an additional~~
6 ~~seven-day extension if needed for clinical reasons to complete the~~
7 ~~evaluation at the determination of the department;~~

8 ~~(iv) For completion of a competency evaluation in the community~~
9 ~~and distribution of the evaluation report for a defendant who is~~
10 ~~released from custody and makes a reasonable effort to cooperate with~~
11 ~~the evaluation, a performance target of twenty-one days or less))~~
12 services.

13 ~~((b) The time periods measured in these performance targets and~~
14 ~~maximum time limits shall run from the date on which the state~~
15 ~~hospital receives the court referral and charging documents,~~
16 ~~discovery, police reports, the names and addresses of the attorneys~~
17 ~~for the defendant and state or county, the name of the judge ordering~~
18 ~~the evaluation, information about the alleged crime, and criminal~~
19 ~~history information related to the defendant. The maximum time limits~~
20 ~~in (a) of this subsection shall be phased in over a one-year period~~
21 ~~beginning July 1, 2015, in a manner that results in measurable~~
22 ~~incremental progress toward meeting the time limits over the course~~
23 ~~of the year.~~

24 ~~(e))~~ (4) It shall be a defense to an allegation that the
25 department has exceeded the maximum time limits for completion of
26 competency services described in ~~((a) of this))~~ subsection (2) of
27 this section if the department can demonstrate by a preponderance of
28 the evidence that the reason for exceeding the maximum time limits
29 was outside of the department's control including, but not limited
30 to, the following circumstances:

31 ~~((i))~~ (a) Despite a timely request, the department has not
32 received necessary medical ~~((clearance))~~ information regarding the
33 current medical status of a defendant ~~((in pretrial custody for the~~
34 ~~purposes of admission to a state hospital))~~;

35 ~~((ii))~~ (b) The individual circumstances of the defendant make
36 accurate completion of an evaluation of competency to ~~((proceed or))~~
37 stand trial dependent upon review of mental health, substance use
38 disorder, or medical history information which is in the custody of a
39 third party and cannot be immediately obtained by the department~~((-~~
40 Completion of a competency evaluation)), provided that completion

1 shall not be postponed for procurement of (~~mental health, substance~~
2 ~~use disorder, or medical history~~) information which is merely
3 supplementary (~~to the competency determination~~);

4 ~~((iii))~~ (c) Additional time is needed for the defendant to no
5 longer show active signs and symptoms of impairment related to
6 substance use so that an accurate evaluation may be completed;

7 (d) The defendant is medically unavailable for competency
8 evaluation or admission to a facility for competency restoration;

9 (e) Completion of the referral (~~is frustrated by lack of~~)
10 requires additional time to accommodate the availability or
11 participation (~~by~~) of counsel, (~~jail or~~) court personnel,
12 interpreters, or the defendant;

13 ~~((iv) The department does not have access to appropriate private~~
14 ~~space to conduct a competency evaluation for a defendant in pretrial~~
15 ~~eustody;~~

16 ~~(v))~~ (f) The defendant asserts legal rights that result in a
17 delay in the provision of competency services; or

18 ~~((vi))~~ (g) An unusual spike in the receipt of evaluation
19 referrals or in the number of defendants requiring restoration
20 services has occurred, causing temporary delays until the unexpected
21 excess demand for competency services can be resolved.

22 ~~((2))~~ (5) The department shall provide written notice to the
23 court when it will not be able to meet the maximum time limits under
24 subsection (2) of this section and identify the reasons for the delay
25 and provide a reasonable estimate of the time necessary to complete
26 the competency service. Good cause for an extension for the
27 additional time estimated by the department shall be presumed absent
28 a written response from the court or a party received by the
29 department within seven days.

30 (6) The department shall:

31 (a) Develop, document, and implement procedures to monitor the
32 clinical status of defendants admitted to a state hospital for
33 competency services that allow the state hospital to accomplish early
34 discharge for defendants for whom clinical objectives have been
35 achieved or may be achieved before expiration of the commitment
36 period;

37 (b) Investigate the extent to which patients admitted to a state
38 hospital under this chapter overstay time periods authorized by law
39 and take reasonable steps to limit the time of commitment to
40 authorized periods; and

1 (c) Establish written standards for the productivity of forensic
2 evaluators and utilize these standards to internally review the
3 performance of forensic evaluators.

4 ~~((3))~~ (7) Following any quarter in which a state hospital has
5 failed to meet one or more of the performance targets or maximum time
6 limits ~~((in))~~ under subsection (1) or (2) of this section ~~((after~~
7 ~~full implementation of the performance target or maximum time~~
8 ~~limit))~~, the department shall report to the executive and the
9 legislature the extent of this deviation and describe any corrective
10 action being taken to improve performance. This report ~~((must))~~ shall
11 be made publicly available. An average may be used to determine
12 timeliness under this subsection.

13 ~~((4) Beginning December 1, 2013, the))~~ (8) The department shall
14 report annually to the legislature and the executive on the
15 timeliness of services related to competency to ~~((proceed or))~~ stand
16 trial and the timeliness with which court referrals accompanied by
17 charging documents, discovery, and criminal history information are
18 provided to the department relative to the signature date of the
19 court order. The report must be in a form that is accessible to the
20 public and that breaks down performance by county.

21 ~~((5))~~ (9) This section does not create any new entitlement or
22 cause of action related to the timeliness of competency ~~((evaluations~~
23 ~~or admission for inpatient restoration))~~ to stand trial services
24 ~~((related to competency to proceed or stand trial))~~, nor can it form
25 the basis for contempt sanctions under chapter 7.21 RCW or a motion
26 to dismiss criminal charges.

27 **Sec. 4.** RCW 10.77.086 and 2019 c 326 s 4 are each amended to
28 read as follows:

29 (1) ~~((a)(i))~~ If the defendant is charged with a felony and
30 determined to be incompetent, until he or she has regained the
31 competency necessary to understand the proceedings against him or her
32 and assist in his or her own defense, but in any event for a period
33 of no longer than ~~((ninety))~~ 90 days, the court shall commit the
34 defendant to the custody of the secretary for inpatient competency
35 restoration ~~((Based))~~, or may alternatively order the defendant to
36 receive outpatient competency restoration based on a recommendation
37 from a forensic navigator and input from the parties ~~((, the court may~~
38 ~~order the defendant to receive inpatient competency restoration or~~
39 ~~outpatient competency restoration))~~.

1 ~~((A))~~ (a) To be eligible for an order for outpatient competency
2 restoration, a defendant must be clinically appropriate and be
3 willing to:

4 ~~((I))~~ (i) Adhere to medications or receive prescribed
5 intramuscular medication; ~~(and~~

6 ~~((II))~~ (ii) Abstain from alcohol and unprescribed drugs; and
7 (iii) Comply with urinalysis or breathalyzer monitoring if
8 needed.

9 ~~((B))~~ (b) If the court orders inpatient competency restoration,
10 the department shall place the defendant in an appropriate facility
11 of the department for competency restoration.

12 ~~((C))~~ (c) If the court orders outpatient competency
13 restoration, the court shall modify conditions of release as needed
14 to authorize the department to place the person in approved housing,
15 which may include access to supported housing, affiliated with a
16 contracted outpatient competency restoration program. The department,
17 in conjunction with the health care authority, must establish rules
18 for conditions of participation in the outpatient competency
19 restoration program, which must include the defendant being subject
20 to medication management ~~((and))~~. The court may order regular
21 urinalysis testing ~~((for defendants who have a current substance use~~
22 ~~disorder diagnosis))~~. The outpatient competency restoration program
23 shall monitor the defendant during the defendant's placement in the
24 program and report any noncompliance or significant changes with
25 respect to the defendant to the department and, if applicable, the
26 forensic navigator.

27 ~~((D))~~ (d) If a defendant fails to comply with the restrictions
28 of the outpatient restoration program such that restoration is no
29 longer appropriate in that setting or the defendant is no longer
30 clinically appropriate for outpatient competency restoration, the
31 ~~((department shall remove the defendant from the outpatient~~
32 ~~restoration program and place the defendant instead))~~ director of the
33 outpatient competency restoration program shall notify the authority
34 and the department of the need to terminate the outpatient competency
35 restoration placement and intent to request placement for the
36 defendant in an appropriate facility of the department for inpatient
37 competency restoration ~~((for no longer than the time allowed as if~~
38 ~~the defendant had been initially placed into inpatient competency~~
39 ~~restoration, in addition to reasonable time for transport to or from~~
40 ~~the facility))~~. The outpatient competency restoration program shall

1 coordinate with the authority, the department, and any law
2 enforcement personnel under (d)(i) of this subsection to ensure that
3 the time period between termination and admission into the inpatient
4 facility is as minimal as possible. The time period for inpatient
5 competency restoration shall be reduced by the time period spent in
6 active treatment within the outpatient competency restoration
7 program, excluding time periods in which the defendant was absent
8 from the program and all time from notice of termination of the
9 outpatient competency restoration period through the defendant's
10 admission to the facility. The department shall obtain a placement
11 for the defendant within seven days of the notice of intent to
12 terminate the outpatient competency restoration placement.

13 (i) The department may authorize a peace officer to detain the
14 defendant into emergency custody for transport to the designated
15 inpatient competency restoration facility. If medical clearance is
16 required by the designated competency restoration facility before
17 admission, the peace officer must transport the defendant to a crisis
18 stabilization unit, evaluation and treatment facility, emergency
19 department of a local hospital, or triage facility for medical
20 clearance once a bed is available at the designated inpatient
21 competency restoration facility. The signed outpatient competency
22 restoration order of the court shall serve as authority for the
23 detention of the defendant under this subsection. This subsection
24 does not preclude voluntary transportation of the defendant to a
25 facility for inpatient competency restoration or for medical
26 clearance, or authorize admission of the defendant into jail.

27 (ii) The department shall notify the court and parties of the
28 ((change—in—placement)) defendant's admission for inpatient
29 competency restoration before the close of the next judicial day. The
30 court shall schedule a hearing within five days to review the
31 ((placement—and)) conditions of release of the defendant and
32 anticipated release from treatment and issue appropriate orders.
33 ((The standard of proof shall be a preponderance of the evidence, and
34 the court may in its discretion render its decision based on written
35 submissions, live testimony, or remote testimony.

36 (E)) (e) The court may not issue an order for outpatient
37 competency restoration unless the department certifies that there is
38 an available appropriate outpatient competency restoration program
39 that has adequate space for the person at the time the order is

1 issued or the court places the defendant under the guidance and
2 control of a professional person identified in the court order.

3 ~~((ii) The ninety day period for competency restoration under
4 this subsection (1) includes only the time the defendant is actually
5 at the facility and is in addition to reasonable time for transport
6 to or from the facility.~~

7 ~~(b))~~ (2) For a defendant whose highest charge is a class C
8 felony, or a class B felony that is not classified as violent under
9 RCW 9.94A.030, the maximum time allowed for the initial competency
10 restoration period ~~((of commitment for competency restoration))~~ is
11 ~~((forty-five))~~ 45 days if the defendant is referred for inpatient
12 competency restoration, or 90 days if the defendant is referred for
13 outpatient competency restoration, provided that if the outpatient
14 competency restoration placement is terminated and the defendant is
15 subsequently admitted to an inpatient facility, the period of
16 inpatient treatment during the first competency restoration period
17 under this subsection shall not exceed 45 days. ~~((The forty-five day
18 period includes only the time the defendant is actually at the
19 facility and is in addition to reasonable time for transport to or
20 from the facility.~~

21 ~~(e))~~ (3) If the court determines or the parties agree before the
22 initial competency restoration period or at any subsequent stage of
23 the proceedings that the defendant is unlikely to regain competency,
24 the court may dismiss the charges without prejudice without ordering
25 the defendant to undergo an initial or further period of competency
26 restoration treatment, in which case the court shall order that the
27 defendant be referred for evaluation for civil commitment in the
28 manner provided in subsection ((4)) (5) of this section.

29 ~~((2))~~ (4) On or before expiration of the initial competency
30 restoration period ~~((of commitment under subsection (1) of this
31 section))~~ the court shall conduct a hearing ~~((, at which it shall))~~ to
32 determine whether ((or not)) the defendant is ((incompetent. (3))
33 now competent to stand trial. If the court finds by a preponderance
34 of the evidence that ~~((a))~~ the defendant ~~((charged with a felony))~~ is
35 incompetent to stand trial, the court ~~((shall have the option of~~
36 ~~extending the))~~ may order ~~((of commitment or alternative treatment))~~
37 an extension of the competency restoration period for an additional
38 period of ~~((ninety))~~ 90 days, but the court must at the same time
39 ~~((of extension))~~ set a date for a ~~((prompt))~~ new hearing to determine
40 the defendant's competency to stand trial before the expiration of

1 ((the)) this second restoration period. The defendant, the
2 defendant's attorney, ~~((or))~~ and the prosecutor ~~((has))~~ have the
3 right to demand that the hearing be before a jury. No extension shall
4 be ordered for a second or third competency restoration period ~~((as~~
5 ~~provided in subsection (4) of this section))~~ if the defendant's
6 incompetence has been determined by the secretary to be solely the
7 result of a developmental disability which is such that competence is
8 not reasonably likely to be regained during an extension. ~~((The~~
9 ~~ninety-day period includes only the time the defendant is actually at~~
10 ~~the facility and is in addition to reasonable time for transport to~~
11 ~~or from the facility.~~

12 ~~(4) For persons charged with a felony, at))~~

13 (5) At the hearing upon the expiration of the second competency
14 restoration period, or at the end of the first competency restoration
15 period ((in the case of a)) if the defendant ((with a developmental
16 disability)) is ineligible for a second or third competency
17 restoration period under subsection (4) of this section, if the jury
18 or court finds that the defendant is incompetent ~~((, or if the court~~
19 ~~or jury at any stage finds that the defendant is incompetent and the~~
20 ~~court determines that the defendant is unlikely to regain competency,~~
21 ~~the charges shall be dismissed)) to stand trial, the court shall~~
22 dismiss the charges without prejudice ~~((,))~~ and ~~((the court shall))~~
23 order the defendant to be committed to a state hospital ~~((as defined~~
24 ~~in RCW 72.23.010))~~ for up to ~~((seventy-two))~~ 120 hours if the
25 defendant has not undergone competency restoration services or has
26 engaged in outpatient competency restoration services and up to 72
27 hours if the defendant engaged in inpatient competency restoration
28 services starting from admission to the facility, excluding
29 Saturdays, Sundays, and holidays, for evaluation for the purpose of
30 filing a civil commitment petition under chapter 71.05 RCW. ~~((The~~
31 ~~criminal charges)) However, the court shall not ~~((be dismissed))~~
32 dismiss the charges if the court or jury finds that: (a) The
33 defendant (i) is a substantial danger to other persons; or (ii)
34 presents a substantial likelihood of committing criminal acts
35 jeopardizing public safety or security; and (b) there is a
36 substantial probability that the defendant will regain competency
37 within a reasonable period of time. ~~((In the event that))~~ If the
38 court or jury makes such a finding, the court may extend the period
39 of commitment for up to an additional six months. ~~((The six-month))~~~~

1 (6) Any period of competency restoration treatment under this
2 section includes only the time the defendant is actually at the
3 facility or is actively participating in an outpatient competency
4 restoration program and is in addition to reasonable time for
5 transport to or from the facility.

6 **Sec. 5.** RCW 10.77.088 and 2020 c 18 s 4 are each amended to read
7 as follows:

8 (1) If the defendant is charged with a nonfelony crime which is a
9 serious offense as identified in RCW 10.77.092 and found by the court
10 to be not competent, then the court:

11 (a) Shall dismiss the proceedings without prejudice and detain
12 the defendant for sufficient time to allow the designated crisis
13 responder to evaluate the defendant and consider initial detention
14 proceedings under chapter 71.05 RCW, unless the prosecutor objects to
15 the dismissal and provides notice of a motion for an order for
16 competency restoration treatment, in which case the court shall
17 schedule a hearing within seven days (~~(to determine whether to enter~~
18 ~~an order of competency restoration)~~).

19 (b) At the hearing, the prosecuting attorney must establish that
20 there is a compelling state interest to order competency restoration
21 treatment for the defendant. The court may consider prior criminal
22 history, prior history in treatment, prior history of violence, the
23 quality and severity of the pending charges, any history that
24 suggests whether (~~or not~~) competency restoration treatment is
25 likely to be successful, in addition to the factors listed under RCW
26 10.77.092. If the prosecuting attorney proves by a preponderance of
27 the evidence that there is a compelling state interest in ordering
28 competency restoration treatment, then the court shall issue an order
29 (~~(competency restoration)~~) in accordance with subsection (2) (~~(a)~~)
30 of this section.

31 (2) (~~(a)~~) If a court finds pursuant to subsection (1)(b) of this
32 section that there is a compelling state interest in pursuing
33 competency restoration treatment, (~~then~~) the court shall commit the
34 defendant to the custody of the secretary for inpatient competency
35 restoration (~~(Based)~~), or may alternatively order the defendant to
36 receive outpatient competency restoration based on a recommendation
37 from a forensic navigator and input from the parties (~~(, the court may~~
38 ~~order the defendant to receive inpatient competency restoration or~~
39 ~~outpatient competency restoration)~~).

1 ~~((i))~~ (a) To be eligible for an order for outpatient competency
2 restoration, a defendant must be clinically appropriate and be
3 willing to:

4 ~~((A))~~ (i) Adhere to medications or receive prescribed
5 intramuscular medication; ~~(and~~

6 ~~(B))~~ (ii) Abstain from alcohol and unprescribed drugs; and
7 (iii) Comply with urinalysis or breathalyzer monitoring if
8 needed.

9 ~~((ii))~~ (b) If the court orders inpatient competency
10 restoration, the department shall place the defendant in an
11 appropriate facility of the department for competency restoration
12 under ~~((b))~~ subsection (3) of this ~~((subsection))~~ section.

13 ~~((iii))~~ (c) If the court orders outpatient competency
14 restoration, the court shall modify conditions of release as needed
15 to authorize the department to place the person in approved housing,
16 which may include access to supported housing, affiliated with a
17 contracted outpatient competency restoration program. The department,
18 in conjunction with the health care authority, must establish rules
19 for conditions of participation in the outpatient competency
20 restoration program, which must include the defendant being subject
21 to medication management ~~((and))~~. The court may order regular
22 urinalysis testing ~~((for defendants who have a current substance use~~
23 ~~disorder diagnosis))~~. The outpatient competency restoration program
24 shall monitor the defendant during the defendant's placement in the
25 program and report any noncompliance or significant changes with
26 respect to the defendant to the department and, if applicable, the
27 forensic navigator.

28 ~~((iv))~~ (d) If a defendant fails to comply with the restrictions
29 of the outpatient competency restoration program such that
30 restoration is no longer appropriate in that setting or the defendant
31 is no longer clinically appropriate for outpatient competency
32 restoration, the ~~((department shall remove the defendant from the~~
33 ~~outpatient restoration program. The department shall place the~~
34 ~~defendant instead))~~ director of the outpatient competency restoration
35 program shall notify the authority and the department of the need to
36 terminate the outpatient competency restoration placement and intent
37 to request placement for the defendant in an appropriate facility of
38 the department for inpatient competency restoration ~~((for no longer~~
39 ~~than twenty-nine days regardless of any time spent in outpatient~~
40 ~~competency restoration, in addition to reasonable time for transport~~

1 ~~to or from the facility~~). The outpatient competency restoration
2 program shall coordinate with the authority, the department, and any
3 law enforcement personnel under (d)(i) of this subsection to ensure
4 that the time period between termination and admission into the
5 inpatient facility is as minimal as possible. The time period for
6 inpatient competency restoration shall be reduced by the time period
7 spent in active treatment within the outpatient competency
8 restoration program, excluding time periods in which the defendant
9 was absent from the program and all time from notice of termination
10 of the outpatient competency restoration period through the
11 defendant's admission to the facility. The department shall obtain a
12 placement for the defendant within seven days of the notice of intent
13 to terminate the outpatient competency restoration placement.

14 (i) The department may authorize a peace officer to detain the
15 defendant into emergency custody for transport to the designated
16 inpatient competency restoration facility. If medical clearance is
17 required by the designated competency restoration facility before
18 admission, the peace officer must transport the defendant to a crisis
19 stabilization unit, evaluation and treatment facility, emergency
20 department of a local hospital, or triage facility for medical
21 clearance once a bed is available at the designated inpatient
22 competency restoration facility. The signed outpatient competency
23 restoration order of the court shall serve as authority for the
24 detention of the defendant under this subsection. This subsection
25 does not preclude voluntary transportation of the defendant to a
26 facility for inpatient competency restoration or for medical
27 clearance, or authorize admission of the defendant into jail.

28 (ii) The department shall notify the court and parties of the
29 (change in placement) defendant's admission for inpatient
30 competency restoration before the close of the next judicial day. The
31 court shall schedule a hearing within five days to review the
32 (placement and) conditions of release of the defendant and
33 anticipated release from treatment and issue appropriate orders.
34 (The standard of proof shall be a preponderance of the evidence, and
35 the court may in its discretion render its decision based on written
36 submissions, live testimony, or remote testimony.

37 ~~(v))~~ (e) The court may not issue an order for outpatient
38 competency restoration unless the department certifies that there is
39 an available appropriate outpatient restoration program that has
40 adequate space for the person at the time the order is issued or the

1 court places the defendant under the guidance and control of a
2 professional person identified in the court order.

3 ~~((b))~~ (3) The placement under ~~((a))~~ subsection (2) of this
4 ~~((subsection))~~ section shall not exceed ~~((twenty-nine))~~ 29 days if
5 the defendant is ordered to receive inpatient competency restoration,
6 ~~((or))~~ and shall not exceed ~~((ninety))~~ 90 days if the defendant is
7 ordered to receive outpatient competency restoration. The court may
8 order any combination of this subsection~~((, not to exceed ninety~~
9 ~~days. This period must be considered to include only the time the~~
10 ~~defendant is actually at the facility and shall be in addition to~~
11 ~~reasonable time for transport to or from the facility))~~, but the
12 total period of inpatient competency restoration may not exceed 29
13 days.

14 ~~((e))~~ (4) If the court has determined or the parties agree that
15 the defendant is unlikely to regain competency, the court may dismiss
16 the charges without prejudice without ordering the defendant to
17 undergo competency restoration treatment, in which case the court
18 shall order that the defendant be referred for evaluation for civil
19 commitment in the manner provided in ~~((d))~~ subsection (5) of this
20 ~~((subsection))~~ section.

21 ~~((d-i))~~ (5)(a) If the proceedings are dismissed under RCW
22 10.77.084 and the defendant was on conditional release at the time of
23 dismissal, the court shall order the designated crisis responder
24 within that county to evaluate the defendant pursuant to chapter
25 71.05 RCW. The evaluation may be conducted in any location chosen by
26 the professional.

27 ~~((ii))~~ (b) If the defendant was in custody and not on
28 conditional release at the time of dismissal, the defendant shall be
29 detained and sent to an evaluation and treatment facility for up to
30 ~~((seventy-two))~~ 120 hours if the defendant has not undergone
31 competency restoration services or has engaged in outpatient
32 competency restoration services and up to 72 hours if the defendant
33 engaged in inpatient competency restoration services, excluding
34 Saturdays, Sundays, and holidays, for evaluation for purposes of
35 filing a petition under chapter 71.05 RCW. The ~~((seventy-two))~~ 120-
36 hour or 72-hour period shall commence upon the next nonholiday
37 weekday following the court order and shall run to the end of the
38 last nonholiday weekday within the ~~((seventy-two))~~ 120-hour or 72-
39 hour period.

1 ~~((3))~~ (6) If the defendant is charged with a nonfelony crime
2 that is not a serious offense as defined in RCW 10.77.092 and found
3 by the court to be not competent, the court may stay or dismiss
4 proceedings and detain the defendant for sufficient time to allow the
5 designated crisis responder to evaluate the defendant and consider
6 initial detention proceedings under chapter 71.05 RCW. The court must
7 give notice to all parties at least ~~((twenty-four))~~ 24 hours before
8 the dismissal of any proceeding under this subsection, and provide an
9 opportunity for a hearing on whether to dismiss the proceedings.

10 ~~((4))~~ (7) If at any time the court dismisses charges under
11 subsections (1) through ~~((3))~~ (6) of this section, the court shall
12 make a finding as to whether the defendant has a history of one or
13 more violent acts. If the court so finds, the defendant is barred
14 from the possession of firearms until a court restores his or her
15 right to possess a firearm under RCW 9.41.047. The court shall state
16 to the defendant and provide written notice that the defendant is
17 barred from the possession of firearms and that the prohibition
18 remains in effect until a court restores his or her right to possess
19 a firearm under RCW 9.41.047.

20 (8) Any period of competency restoration treatment under this
21 section includes only the time the defendant is actually at the
22 facility or is actively participating in an outpatient competency
23 restoration program and is in addition to reasonable time for
24 transport to or from the facility.

25 **Sec. 6.** RCW 10.77.250 and 1987 c 75 s 1 are each amended to read
26 as follows:

27 ~~((The))~~ (1) Within amounts appropriated, the department shall be
28 responsible for all costs relating to the evaluation and inpatient
29 treatment of persons committed to it pursuant to any provisions of
30 this chapter, and the logistical and supportive services pertaining
31 thereto except as otherwise provided by law. Reimbursement may be
32 obtained by the department pursuant to RCW 43.20B.330.

33 (2) Within amounts appropriated, the authority shall be
34 responsible for all costs relating to outpatient competency
35 restoration programs.

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

1 No officer of a public or private agency, nor the superintendent,
2 professional person in charge, his or her professional designee, or
3 attending staff of any such agency, nor any public official
4 performing functions necessary to the administration of this chapter,
5 nor peace officer responsible for detaining a person pursuant to this
6 chapter, nor the state, a unit of local government, an evaluation and
7 treatment facility, a secure withdrawal management and stabilization
8 facility, or an approved substance use disorder treatment program
9 shall be civilly or criminally liable for performing duties pursuant
10 to this chapter with regard to the decision of whether to detain a
11 person for medical clearance or treatment, provided that such duties
12 were performed in good faith and without gross negligence.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.77
14 RCW to read as follows:

15 The authority shall report annually to the governor and relevant
16 committees of the legislature, beginning November 1, 2022, and shall
17 make the report public, describing:

18 (1) How many individuals are being served by outpatient
19 competency restoration programs and in what locations;

20 (2) The length of stay of individuals in outpatient competency
21 restoration programs;

22 (3) The number of individuals who are revoked from an outpatient
23 competency restoration program into inpatient treatment, and the
24 outcomes of other individuals, if any, whose participation in an
25 outpatient competency restoration program were terminated before the
26 completion of the program; and

27 (4) For individuals who were revoked from an outpatient
28 competency restoration program into an inpatient competency
29 restoration program, how many days the individuals spent in
30 outpatient competency restoration treatment and inpatient competency
31 restoration treatment, and whether the restoration programs resulted
32 in a finding of competent to stand trial or another outcome.

33 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of
35 the state government and its existing public institutions, and takes
36 effect immediately.

--- END ---