

1 (c) The prosecutor shall send a copy of the order for evaluation to
2 the secretary of the department of social and health services and a
3 copy of the charging document, certification of probable cause, police
4 report, and a summary of the defendant's criminal history. These
5 documents shall be provided as soon as possible, and no later than
6 three business days after the order is signed. The court or either
7 party may provide additional information to the secretary of the
8 department of social and health services which it reasonably deems to
9 be of assistance to the evaluation, unless such action would infringe
10 upon ethical duties.

11 (d) The report of an evaluation of a defendant who is being held in
12 custody at a jail or detention facility shall be completed within
13 twenty-one days from the time of receipt by the secretary of the
14 department of social and health services of the documents specified in
15 (c) of this subsection, unless transportation of the defendant to a
16 hospital or secure mental health facility is necessary under (b) of
17 this subsection, in which case the secretary of the department of
18 social and health services shall authorize transportation of the
19 defendant as soon as possible, and within seven days of the request.
20 A defendant transported under (b) of this subsection may be admitted to
21 a hospital or secure mental health facility for only the length of time
22 necessary to complete an evaluation, and for no longer than fifteen
23 days.

24 (e) If at any point the evaluator becomes aware that the defendant
25 may have a developmental disability, or if it appears that the
26 characteristics of developmental disability may be a significant factor
27 in the defendant's ability to participate in the criminal proceeding,
28 the evaluation shall be performed by or in consultation with a
29 developmental disabilities professional.

30 (f) For good cause, the court may extend the time period for
31 completion of an evaluation.

32 (g) Upon agreement by the parties, the court may appoint a
33 qualified expert or professional person to evaluate the competency of
34 the defendant instead of requesting the secretary of the department of
35 social and health services to designate an evaluator. Only an
36 evaluator designated by the secretary of the department of social and
37 health services may request that the defendant be transported to a
38 state hospital for evaluation under (b) of this subsection.

1 (2) The court may direct that a qualified expert or professional
2 person retained by or appointed for the defendant be permitted to
3 witness the evaluation authorized by subsection (1) of this section,
4 and that the defendant shall have access to all information obtained by
5 the evaluator. The defendant's expert or professional person shall
6 have the right to file his or her own report following the guidelines
7 of subsection (3) of this section. If the defendant is indigent, the
8 court shall upon the request of the defendant assist him or her in
9 obtaining an expert or professional person.

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

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

12 (b) A diagnosis of the mental condition of the defendant;

13 (c) An opinion as to competency;

14 (d) An opinion as to whether the defendant should be evaluated by
15 a designated mental health professional under chapter 71.05 RCW.

16 (4) The secretary of the department of social and health services
17 may execute such agreements as appropriate and necessary to implement
18 this section.

19 NEW SECTION. **Sec. 102.** (1)(a)(i) An evaluator appointed under RCW
20 10.77.060 or an expert or professional person appointed under section
21 106 of this act shall provide a report and recommendation to the court
22 in which the criminal proceeding is pending. A copy of the report and
23 recommendation shall be provided to the designated mental health
24 professional, the prosecuting attorney, the defense attorney, and the
25 professional person at the local correctional facility where the
26 defendant is being held, or if there is no professional person, to the
27 person designated under (a)(ii) of this subsection. Upon request, the
28 secretary of the department of social and health services shall also
29 provide copies of any source documents relevant to the evaluation to
30 the designated mental health professional. The report and
31 recommendation shall be provided not less than twenty-four hours
32 preceding the transfer of the defendant to the correctional facility in
33 the county in which the criminal proceeding is pending.

34 (ii) If there is no professional person at the local correctional
35 facility, the local correctional facility shall designate a
36 professional person as defined in RCW 71.05.020 or, in cooperation with

1 the regional support network, a professional person at the regional
2 support network to receive the report and recommendation.

3 (iii) When a defendant is transferred to a hospital or other secure
4 facility for an evaluation, or upon commencement of a defendant's
5 evaluation in the local correctional facility, the local correctional
6 facility must notify the evaluator or the facility conducting the
7 evaluation of the name of the professional person, or person designated
8 under (a)(ii) of this subsection to receive the report and
9 recommendation.

10 (b) If the report of an evaluation performed under RCW 10.77.060,
11 10.77.084(5), or section 106 of this act recommends that a defendant in
12 custody should be evaluated by a designated mental health professional
13 under chapter 71.05 RCW, the court shall order an evaluation be
14 conducted prior to the individual's release from confinement following
15 any conviction, dismissal, or acquittal, unless the individual is
16 sentenced to confinement for more than twenty-four months.

17 (2) A designated mental health professional conducting an
18 evaluation under subsection (1)(b) of this section shall notify the
19 persons identified in subsection (1)(a) of this section within twenty-
20 four hours detention was initiated under chapter 71.05 RCW.

21 (3) The petitioner in a proceeding initiated under subsection (2)
22 of this section shall provide a copy of the results of the proceeding
23 to the secretary of the department of social and health services.

24 (4) The fact of admission and all information and records compiled,
25 obtained, or maintained in the course of providing services under this
26 section may be disclosed to the courts solely to prevent the entry of
27 any evaluation or treatment order that is inconsistent with any order
28 entered under chapter 71.05 RCW.

29 **Sec. 103.** RCW 10.77.084 and 2007 c 375 s 3 are each amended to
30 read as follows:

31 (1)(a) If at any time during the pendency of an action and prior to
32 judgment the court finds, following a report (~~(as provided in)~~) under
33 RCW 10.77.060 or section 106 of this act, a defendant is incompetent,
34 the court shall order the proceedings against the defendant be stayed
35 except as provided in subsection (4) of this section. The court shall
36 order the defendant to undergo a period of treatment for restoration of

1 competency within the time limits established by RCW 10.77.086 and
2 10.77.088 and the requirements of this section.

3 ~~(b) ((A defendant found incompetent shall be evaluated at the~~
4 ~~direction of the secretary and a determination made whether the~~
5 ~~defendant is an individual with a developmental disability. Such~~
6 ~~evaluation and determination shall be accomplished as soon as possible~~
7 ~~following the court's placement of the defendant in the custody of the~~
8 ~~secretary.~~

9 ~~(i) When appropriate, and subject to available funds, if the~~
10 ~~defendant is determined to be an individual with a developmental~~
11 ~~disability, he or she may be placed in a program specifically reserved~~
12 ~~for the treatment and training of persons with developmental~~
13 ~~disabilities where the defendant shall have the right to habilitation~~
14 ~~according to an individualized service plan specifically developed for~~
15 ~~the particular needs of the defendant. A copy of the evaluation shall~~
16 ~~be sent to the program.~~

17 ~~(A) The program shall be separate from programs serving persons~~
18 ~~involved in any other treatment or habilitation program.~~

19 ~~(B) The program shall be appropriately secure under the~~
20 ~~circumstances and shall be administered by developmental disabilities~~
21 ~~professionals who shall direct the habilitation efforts.~~

22 ~~(C) The program shall provide an environment affording security~~
23 ~~appropriate with the charged criminal behavior and necessary to protect~~
24 ~~the public safety.~~

25 ~~(ii) The department may limit admissions of such persons to this~~
26 ~~specialized program in order to ensure that expenditures for services~~
27 ~~do not exceed amounts appropriated by the legislature and allocated by~~
28 ~~the department for such services.~~

29 ~~(iii) The department may establish admission priorities in the~~
30 ~~event that the number of eligible persons exceeds the limits set by the~~
31 ~~department.~~

32 ~~(e))~~ At the end of ~~((the mental health treatment and))~~ a
33 competency restoration period ordered under (a) of this subsection, or
34 at any time a professional person determines competency has been, or is
35 unlikely to be, restored, the defendant shall be returned to court for
36 a hearing. If, after notice and hearing, the court finds that
37 competency has been restored, the stay entered under (a) of this
38 subsection shall be lifted. ~~((If competency has not been restored, the~~

1 ~~proceedings shall be dismissed.~~) If the court ~~((concludes))~~ finds
2 that competency has not been restored, but that further treatment
3 within the time limit~~((s))~~ established by RCW 10.77.086 ~~((or~~
4 ~~10.77.088))~~ is likely to restore competency, the court may order
5 ~~((that))~~ the defendant to undergo an additional period of treatment for
6 purposes of competency restoration ~~((be continued. Such treatment may~~
7 ~~not extend beyond the combination of time provided for in RCW 10.77.086~~
8 ~~or 10.77.088))~~.

9 ~~((d))~~ (c) If at any time ~~((during the proceeding))~~ the court
10 finds, following notice and hearing, ~~((a))~~ that the defendant is not
11 competent and is either not likely to regain competency, or no current
12 or further period of competency restoration treatment is allowable
13 under RCW 10.77.086 or 10.77.088, the ~~((proceedings shall be~~
14 ~~dismissed))~~ court shall dismiss the charges without prejudice and ~~((the~~
15 ~~defendant shall be evaluated for civil commitment proceedings))~~ enter
16 one of the following orders:

17 (i) If the charge was a felony, and was a serious offense as
18 defined by RCW 10.77.092, the court shall detain the defendant and
19 order the defendant to be transferred to a state hospital or other
20 suitably secure mental health facility for purpose of evaluation under
21 chapter 71.05 RCW.

22 (ii) If the charge was a nonfelony, and was a serious offense as
23 defined by RCW 10.77.092, and the defendant was in custody and not on
24 conditional release at the time of dismissal, the court may detain the
25 defendant and order the defendant to be transferred to an evaluation
26 and treatment facility for the purpose of evaluation under chapter
27 71.05 RCW. The defendant may be detained in jail for no longer than
28 three days, excluding holidays, prior to transfer or release, and
29 subsequently may be detained by the evaluation and treatment facility
30 for up to seventy-two hours, excluding Saturdays, Sundays, and
31 holidays, prior to the filing of a petition under chapter 71.05 RCW.
32 The secretary may consent to receive the defendant at a state hospital
33 in lieu of transfer to an evaluation and treatment facility. The
34 defendant may be screened prior to transfer to determine whether civil
35 commitment criteria are met.

36 (iii) If the charge was not a serious offense as defined by RCW
37 10.77.092, or if the charge was a nonfelony and the defendant was on
38 conditional release at the time of dismissal, the court may order the

1 defendant to undergo an evaluation by a designated mental health
2 professional, and shall do so if required by RCW 10.77.065(1)(b). A
3 defendant who is in custody, or who refuses to cooperate with the
4 evaluation, may be detained in custody for up to forty-eight hours for
5 this evaluation.

6 (d) Notwithstanding any other limitations, a defendant who has
7 multiple criminal charges may undergo competency restoration treatment
8 for all charges for the longest time period allowable for any of the
9 charges.

10 (2) If the defendant is referred to the designated mental health
11 professional for consideration of ~~((initial))~~ detention ~~((proceedings))~~
12 under chapter 71.05 RCW ~~((pursuant to this chapter))~~, the designated
13 mental health professional shall provide ~~((prompt - written))~~
14 notification of ~~((the results of the determination whether to commence~~
15 ~~initial detention proceedings under chapter 71.05 RCW and))~~ whether the
16 ~~((person))~~ defendant was detained according to RCW 10.77.065(2). ~~((The~~
17 ~~notification shall be provided to the court in which the criminal~~
18 ~~action was pending, the prosecutor, the defense attorney in the~~
19 ~~criminal action, and the facility that evaluated the defendant for~~
20 ~~competency.))~~

21 ~~((The fact))~~ A finding that the defendant is ~~((unfit to~~
22 ~~proceed))~~ not competent does not preclude any pretrial proceedings
23 which do not require the personal participation of the defendant.

24 (4) A defendant receiving medication for either physical or mental
25 problems shall not be prohibited from standing trial, if the medication
26 either enables the defendant to understand the proceedings against him
27 or her and to assist in his or her own defense, or does not disable him
28 or her from so understanding and assisting in his or her own defense.

29 (5) At or before the conclusion of any ~~((commitment))~~ competency
30 restoration period provided for by ~~((this section))~~ RCW 10.77.086 or
31 10.77.088, the facility providing evaluation and treatment shall
32 provide to the court a written report ~~((of examination))~~ which meets
33 the requirements of RCW 10.77.060(3).

34 **Sec. 104.** RCW 10.77.086 and 2007 c 375 s 4 are each amended to
35 read as follows:

36 ~~((1))~~ If ~~((the))~~ a defendant is charged with a felony and
37 determined to be incompetent~~((7))~~:

1 (1) Until ((he or she)) the defendant has regained the competency
2 necessary to understand the proceedings against him or her and assist
3 in his or her own defense, or has been determined to be unlikely to
4 regain competency ((pursuant to RCW 10.77.084(1)(c))), but in any event
5 for a period of no longer than ninety days, the court((÷

6 (+)) shall commit the defendant to the custody of the secretary
7 who shall place such defendant in an appropriate facility of the
8 department for evaluation and treatment((÷ or

9 (b) May alternatively order the defendant to undergo evaluation and
10 treatment at some other facility as determined by the department, or
11 under the guidance and control of a professional person)).

12 (2) On or before expiration of the initial ((ninety day)) period of
13 commitment under subsection (1) of this section, the secretary shall
14 provide the court and the parties with a report in accordance with RCW
15 10.77.060(3). The secretary shall return the defendant to court
16 ((shall conduct)) for a hearing, at which ((it)) the court shall
17 determine by a preponderance of the evidence whether or not the
18 defendant is incompetent as provided by RCW 10.77.084(1)(b).

19 (3) If, following a hearing under subsection (2) of this section,
20 the court finds ((by a preponderance of the evidence)) that ((a)) the
21 defendant ((charged with a felony is)) remains incompetent, the court
22 ((shall have the option of extending the)) may order ((of commitment or
23 alternative)) a second period of competency restoration treatment for
24 an additional ((ninety day)) period((, but)) of up to ninety days.

25 (a) If a second period of competency restoration treatment would
26 cause the defendant to be held in custody for a longer period than the
27 defendant would have been likely to spend in custody if the defendant
28 were convicted and sentenced to the top of the defendant's standard
29 sentencing range, the court shall not order a second period of
30 competency restoration treatment unless it finds by a preponderance of
31 the evidence following a hearing that further competency restoration
32 treatment is in the public interest due to particular circumstances
33 related to the nature or impact of the alleged offense, or the criminal
34 or treatment history of the defendant.

35 (b) If treatment is extended, the court must at the time of
36 extension set a date for a prompt hearing to determine the defendant's
37 competency before the expiration of the second ninety-day period. The

1 defendant, the defendant's attorney, or the prosecutor has the right to
2 demand that the hearing be before a jury.

3 (c) No extension shall be ordered for a second ninety-day period,
4 nor for any subsequent period as provided in subsection (4) of this
5 section, if the defendant's incompetence has been determined by the
6 secretary to be solely the result of a developmental disability which
7 is such that competence is not reasonably likely to be regained during
8 an extension.

9 (4) (~~For persons charged with a felony, at the hearing upon the~~
10 ~~expiration of the second ninety day period or at the end of the first~~
11 ~~ninety day period, in the case of a defendant with a developmental~~
12 ~~disability, if the jury or court finds that the defendant is~~
13 ~~incompetent, the charges shall be dismissed without prejudice, and~~
14 ~~either civil commitment proceedings shall be instituted or the court~~
15 ~~shall order the release of the defendant. The criminal charges shall~~
16 ~~not be dismissed~~) If the court or jury finds that the defendant
17 remains incompetent following a second period of competency restoration
18 treatment under subsection (3) of this section, the court may order a
19 third and final period of competency restoration treatment only if the
20 court or jury finds that: (a) The defendant (i) is a substantial
21 danger to other persons; or (ii) presents a substantial likelihood of
22 committing criminal acts jeopardizing public safety or security; and
23 (b) there is a substantial probability that the defendant will regain
24 competency within a reasonable period of time. In the event that the
25 court or jury makes such a finding, the court may extend the period of
26 commitment for up to an additional six months. A third period of
27 competency restoration treatment shall not be ordered if the
28 allegations against the defendant do not include one or more charges
29 which are serious offenses as defined by RCW 10.77.092.

30 **Sec. 105.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to
31 read as follows:

32 (~~(1)(a)~~) If (~~the~~) a defendant is charged with a nonfelony
33 (~~crime which~~) and determined to be incompetent:

34 (1) If at least one of the charges is a serious offense as
35 (~~identified in~~) defined by RCW 10.77.092 (~~and found by the court to~~
36 ~~be not competent~~), then the court shall order the secretary to place
37 the defendant:

1 ~~((i))~~ (a) At a secure mental health facility in the custody of
2 the department or an agency designated by the department for mental
3 health treatment and restoration of competency. The placement shall
4 not exceed fourteen days in addition to any unused time of the
5 evaluation under RCW 10.77.060. The court shall compute this total
6 period and include its computation in the order. The fourteen-day
7 period plus any unused time of the evaluation under RCW 10.77.060 shall
8 be considered to include only the time the defendant is actually at the
9 facility and shall be in addition to reasonable time for transport to
10 or from the facility; or

11 ~~((ii))~~ (b) On conditional release for up to ninety days for
12 mental health treatment and restoration of competency ~~((or~~
13 ~~(iii) Any combination of this subsection.~~

14 ~~(b)(i) If the proceedings are dismissed under RCW 10.77.084 and the~~
15 ~~defendant was on conditional release at the time of dismissal, the~~
16 ~~court shall order the designated mental health professional within that~~
17 ~~county to evaluate the defendant pursuant to chapter 71.05 RCW. The~~
18 ~~evaluation may be conducted in any location chosen by the professional.~~

19 ~~(ii) If the defendant was in custody and not on conditional release~~
20 ~~at the time of dismissal, the defendant shall be detained and sent to~~
21 ~~an evaluation and treatment facility for up to seventy two hours,~~
22 ~~excluding Saturdays, Sundays, and holidays, for evaluation for purposes~~
23 ~~of filing a petition under chapter 71.05 RCW. The seventy two hour~~
24 ~~period shall commence upon the next nonholiday weekday following the~~
25 ~~court order and shall run to the end of the last nonholiday weekday~~
26 ~~within the seventy two hour period)).~~

27 (2) If the defendant is charged with a nonfelony ~~((crime))~~ that is
28 not a serious offense as defined in RCW 10.77.092 ~~((or~~

29 ~~The court may stay or dismiss proceedings and detain the defendant~~
30 ~~for sufficient time to allow the designated mental health professional~~
31 ~~to evaluate the defendant and consider initial detention proceedings~~
32 ~~under chapter 71.05 RCW. The court must give notice to all parties at~~
33 ~~least twenty four hours before the dismissal of any proceeding under~~
34 ~~this subsection, and provide an opportunity for a hearing on whether to~~
35 ~~dismiss the proceedings)), the court shall not order competency~~
36 ~~restoration treatment, and shall instead enter an order under RCW~~
37 ~~10.77.084(1)(c).~~

1 NEW SECTION. **Sec. 106.** A new section is added to chapter 10.77

2 RCW to read as follows:

3 (1)(a) Whenever a defendant has pleaded not guilty by reason of
4 insanity, or has advised the court or a party of his or her intention
5 to rely upon a defense of diminished capacity and endorsed an expert
6 witness who will testify in support of a diminished capacity defense,
7 the court, on motion of the prosecuting attorney, shall either appoint
8 or request the secretary to designate a qualified expert or
9 professional person to evaluate and report upon the mental condition of
10 the defendant. The signed order of the court shall serve as authority
11 for the evaluator to be given access to all records held by any mental
12 health, medical, educational, or correctional facility that relate to
13 the present or past mental, emotional, or physical condition of the
14 defendant.

15 (b) The court shall not order the secretary to perform an
16 evaluation under this section for reasons other than those specified in
17 (a) of this subsection.

18 (c) A defendant who is transported to a state hospital or other
19 suitably secure mental health facility for an evaluation under this
20 section may be admitted for only the length of time necessary to
21 complete the evaluation, and for no longer than fifteen days.

22 (d) The prosecutor shall send the order for evaluation to the
23 secretary along with a copy of the charging document, certification of
24 probable cause, police report, and a summary of the defendant's
25 criminal history. The court or either party may provide additional
26 information to the secretary which it reasonably deems to be of
27 assistance to the evaluation, unless such action would infringe upon
28 ethical duties.

29 (2) The report of the evaluation shall include the following:

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

31 (b) A diagnosis of the mental condition of the defendant;

32 (c) An opinion as to competency;

33 (d) An opinion as to the defendant's sanity at the time of the act;

34 (e) An opinion as to whether the defendant is a substantial danger
35 to other persons, or presents a substantial likelihood of committing
36 criminal acts jeopardizing public safety or security, unless kept under
37 further control by the court or other persons or institutions;

1 (f) When directed by the court, an opinion as to the capacity of
2 the defendant to have a particular state of mind which is an element of
3 the offense charged;

4 (g) An opinion as to whether the defendant should be evaluated by
5 a designated mental health professional for civil commitment under
6 chapter 71.05 RCW prior to release from custody.

7 (3) The court may direct that a qualified expert or professional
8 person retained by or appointed for the defendant be permitted to
9 witness the evaluation authorized by subsection (1) of this section,
10 and that the defendant shall have access to all information obtained by
11 the evaluator. The defendant's expert or professional person has the
12 right to file his or her own report following the guidelines of
13 subsection (2) of this section. If the defendant is indigent, the
14 court shall upon the request of the defendant assist him or her in
15 obtaining an expert or professional person.

16 NEW SECTION. **Sec. 107.** A new section is added to chapter 10.77
17 RCW to read as follows:

18 Statements made by a defendant during a competency evaluation,
19 competency hearing, or competency restoration treatment shall not be
20 admissible in the state's case in chief. After the state's case in
21 chief, those statements may be admissible according to the rules of
22 evidence if a mental defense such as insanity or diminished capacity is
23 asserted or to impeach testimony by the defendant.

24 NEW SECTION. **Sec. 108.** A new section is added to chapter 10.77
25 RCW to read as follows:

26 Any defendant placed in the custody of the secretary for competency
27 restoration treatment shall be evaluated at the direction of the
28 secretary as soon as possible and a determination made whether the
29 defendant is an individual with a developmental disability.

30 (1) When appropriate, and subject to available funds, if the
31 defendant is determined to be an individual with a developmental
32 disability, he or she may be placed in a program specifically reserved
33 for the treatment and training of persons with developmental
34 disabilities where the defendant has the right to habilitation
35 according to an individualized service plan specifically developed for

1 the particular needs of the defendant. A copy of the evaluation shall
2 be sent to the program.

3 (a) The program shall be separate from programs serving persons
4 involved in any other treatment or habilitation program.

5 (b) The program shall be appropriately secure under the
6 circumstances and shall be administered by developmental disabilities
7 professionals who shall direct the habilitation efforts.

8 (c) The program shall provide an environment affording security
9 appropriate with the charged criminal behavior and necessary to protect
10 the public safety.

11 (2) The department may limit admissions of such persons to this
12 specialized program in order to ensure that expenditures for services
13 do not exceed amounts appropriated by the legislature and allocated by
14 the department for such services.

15 (3) The department may establish admission priorities in the event
16 that the number of eligible persons exceeds the limits set by the
17 department.

18 NEW SECTION. **Sec. 109.** A new section is added to chapter 10.77
19 RCW to read as follows:

20 (1) Whenever a jail or detention center receives notice of a
21 request or order requiring transfer of a defendant to a state hospital
22 or other medical facility under RCW 10.77.060 or 10.77.084, the jail or
23 detention center shall provide all medical information in its
24 possession necessary for the admission of the defendant to the
25 secretary within three days. The secretary shall not be responsible
26 under subsection (2) of this section for unreasonable delays in
27 transmission of medical information.

28 (2) If the secretary fails to conduct or complete a competency
29 evaluation within the time limits prescribed by RCW 10.77.060, the
30 court may conduct a show cause hearing upon the motion of any party to
31 determine why the evaluation was not conducted or completed within the
32 allotted time. An order to show cause shall be set forth in writing
33 and shall be served upon the secretary. If the court finds that time
34 limits were exceeded by the secretary without good cause, it may set a
35 fixed time for the completion of the evaluation and may order the
36 secretary to reimburse expenses to the jail for any excess days at a
37 rate of ninety dollars per day. The hearing may include review of a

1 corrective action plan entered under section 110(7) of this act.
2 Failure to conduct or complete a competency evaluation within time
3 limitations shall not be cause for dismissal of criminal charges.

4 (3) A jail is not civilly liable for delays by the secretary in
5 providing competency evaluation services under RCW 10.77.060, or for
6 the release of an individual from custody according to the requirements
7 of RCW 10.77.084.

8 (4) Nothing in this section is intended to denigrate other rights
9 retained by operators of jails or other parties.

10 NEW SECTION. **Sec. 110.** A new section is added to chapter 10.77
11 RCW to read as follows:

12 The department shall report annually to the legislature beginning
13 October 1, 2010, concerning the waiting period for competency
14 evaluations and competency restoration treatment during the past state
15 fiscal year.

16 The report shall include:

17 (1) The number of competency evaluation referrals received, grouped
18 by state hospital catchment;

19 (2) The average waiting period for competency evaluations,
20 presented on a monthly basis, and grouped by state hospital catchment.
21 The department shall separate competency evaluations which occur
22 entirely in a jail or detention center from other competency
23 evaluations. The waiting period measured shall be from the time the
24 secretary receives the order for evaluation and other documents
25 identified in RCW 10.77.060 to the time of distribution of the
26 evaluation report;

27 (3) The average waiting period for competency evaluations,
28 presented on an annual basis, and itemized by county. The evaluations
29 shall be separated and measured as in subsection (2) of this section;

30 (4) The average waiting period for inpatient competency
31 restoration, presented on a monthly basis, and grouped by state
32 hospital catchment. The waiting period measured shall be from the time
33 the secretary receives the restoration referral to the time the
34 defendant is transported to the state hospital, but shall not include
35 any delay solely attributable to a failure by a jail or detention
36 center to provide information required by section 109(1) of this act;

1 (5) The number of competency restoration treatment referrals
2 received on an annual basis, grouped by state hospital catchment. This
3 information shall be separated into nonfelony referrals, first ninety-
4 day felony referrals, second ninety-day felony referrals, and final one
5 hundred eighty-day felony referrals. The report shall include average
6 length of stay information and the percentage of successful outcomes at
7 each stage;

8 (6) The number of hearings held pursuant to section 109(2) of this
9 act during the reporting period, grouped by state hospital catchment;
10 and

11 (7) If the data indicates that the department has failed to comply
12 with the time limits prescribed by RCW 10.77.060 and 10.77.220, a
13 description of a corrective action plan entered by the department to
14 bring the department into compliance with these sections.

15 The department may include any additional information or
16 subgroupings in the report that it determines to be appropriate.

17 **PART II**
18 **TECHNICAL CHANGES**

19 **Sec. 201.** RCW 10.77.163 and 2008 c 213 s 4 are each amended to
20 read as follows:

21 (1) Before a person committed under this chapter is permitted
22 temporarily to leave a treatment facility for any period of time
23 without constant accompaniment by facility staff, the superintendent,
24 professional person in charge of a treatment facility, or his or her
25 professional designee shall in writing notify the prosecuting attorney
26 of any county to which the person is released and the prosecuting
27 attorney of the county in which the criminal charges against the
28 committed person were dismissed, of the decision conditionally to
29 release the person. The notice shall be provided at least forty-five
30 days before the anticipated release and shall describe the conditions
31 under which the release is to occur.

32 (2) In addition to the notice required by subsection (1) of this
33 section, the superintendent of each state institution designated for
34 the custody, care, and treatment of persons committed under this
35 chapter shall notify appropriate law enforcement agencies through the
36 state patrol communications network of the furloughs of persons

1 committed under RCW (~~(10.77.086)~~) 10.77.084(1)(c) or 10.77.110.
2 Notification shall be made at least thirty days before the furlough,
3 and shall include the name of the person, the place to which the person
4 has permission to go, and the dates and times during which the person
5 will be on furlough.

6 (3) Upon receiving notice that a person committed under this
7 chapter is being temporarily released under subsection (1) of this
8 section, the prosecuting attorney may seek a temporary restraining
9 order to prevent the release of the person on the grounds that the
10 person is dangerous to self or others.

11 (4) The notice requirements contained in this section shall not
12 apply to emergency medical furloughs.

13 (5) The existence of the notice requirements contained in this
14 section shall not require any extension of the release date in the
15 event the release plan changes after notification.

16 (6) The notice provisions of this section are in addition to those
17 provided in RCW 10.77.205.

18 **Sec. 202.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to
19 read as follows:

20 At the expiration of the fourteen-day period of intensive
21 treatment, a person may be confined for further treatment pursuant to
22 RCW 71.05.320 if:

23 (1) Such person after having been taken into custody for evaluation
24 and treatment has threatened, attempted, or inflicted: (a) Physical
25 harm upon the person of another or himself or herself, or substantial
26 damage upon the property of another, and (b) as a result of mental
27 disorder presents a likelihood of serious harm; or

28 (2) Such person was taken into custody as a result of conduct in
29 which he or she attempted or inflicted physical harm upon the person of
30 another or himself or herself, or substantial damage upon the property
31 of others, and continues to present, as a result of mental disorder, a
32 likelihood of serious harm; or

33 (3) Such person has been determined to be incompetent and criminal
34 charges have been dismissed pursuant to RCW (~~(10.77.086(4))~~)
35 10.77.084(1)(c), and has committed acts constituting a felony, and as
36 a result of a mental disorder, presents a substantial likelihood of

1 repeating similar acts. In any proceeding pursuant to this subsection
2 it shall not be necessary to show intent, willfulness, or state of mind
3 as an element of the crime; or

4 (4) Such person is gravely disabled.

5 **Sec. 203.** RCW 71.05.290 and 2008 c 213 s 7 are each amended to
6 read as follows:

7 (1) At any time during a person's fourteen day intensive treatment
8 period, the professional person in charge of a treatment facility or
9 his or her professional designee or the designated mental health
10 professional may petition the superior court for an order requiring
11 such person to undergo an additional period of treatment. Such
12 petition must be based on one or more of the grounds set forth in RCW
13 71.05.280.

14 (2) The petition shall summarize the facts which support the need
15 for further confinement and shall be supported by affidavits signed by
16 two examining physicians, or by one examining physician and examining
17 mental health professional. The affidavits shall describe in detail
18 the behavior of the detained person which supports the petition and
19 shall explain what, if any, less restrictive treatments which are
20 alternatives to detention are available to such person, and shall state
21 the willingness of the affiant to testify to such facts in subsequent
22 judicial proceedings under this chapter.

23 (3) If a person has been determined to be incompetent pursuant to
24 RCW (~~(10.77.086(4))~~) 10.77.084(1)(c), then the professional person in
25 charge of the treatment facility or his or her professional designee or
26 the designated mental health professional may directly file a petition
27 for one hundred eighty day treatment under RCW 71.05.280(3). No
28 petition for initial detention or fourteen day detention is required
29 before such a petition may be filed.

30 **Sec. 204.** RCW 71.05.300 and 2008 c 213 s 8 are each amended to
31 read as follows:

32 (1) The petition for ninety day treatment shall be filed with the
33 clerk of the superior court at least three days before expiration of
34 the fourteen-day period of intensive treatment. At the time of filing
35 such petition, the clerk shall set a time for the person to come before
36 the court on the next judicial day after the day of filing unless such

1 appearance is waived by the person's attorney, and the clerk shall
2 notify the designated mental health professional. The designated
3 mental health professional shall immediately notify the person
4 detained, his or her attorney, if any, and his or her guardian or
5 conservator, if any, the prosecuting attorney, and the regional support
6 network administrator, and provide a copy of the petition to such
7 persons as soon as possible. The regional support network
8 administrator or designee may review the petition and may appear and
9 testify at the full hearing on the petition.

10 (2) At the time set for appearance the detained person shall be
11 brought before the court, unless such appearance has been waived and
12 the court shall advise him or her of his or her right to be represented
13 by an attorney and of his or her right to a jury trial. If the
14 detained person is not represented by an attorney, or is indigent or is
15 unwilling to retain an attorney, the court shall immediately appoint an
16 attorney to represent him or her. The court shall, if requested,
17 appoint a reasonably available licensed physician, psychologist, or
18 psychiatrist, designated by the detained person to examine and testify
19 on behalf of the detained person.

20 (3) The court may, if requested, also appoint a professional person
21 as defined in RCW 71.05.020 to seek less restrictive alternative
22 courses of treatment and to testify on behalf of the detained person.
23 In the case of a person with a developmental disability who has been
24 determined to be incompetent pursuant to RCW ((~~10.77.086(4)~~))
25 10.77.084(1)(c), then the appointed professional person under this
26 section shall be a developmental disabilities professional.

27 (4) The court shall also set a date for a full hearing on the
28 petition as provided in RCW 71.05.310.

29 **Sec. 205.** RCW 71.05.320 and 2008 c 213 s 9 are each amended to
30 read as follows:

31 (1) If the court or jury finds that grounds set forth in RCW
32 71.05.280 have been proven and that the best interests of the person or
33 others will not be served by a less restrictive treatment which is an
34 alternative to detention, the court shall remand him or her to the
35 custody of the department or to a facility certified for ninety day
36 treatment by the department for a further period of intensive treatment
37 not to exceed ninety days from the date of judgment: PROVIDED, That

1 (a) If the grounds set forth in RCW 71.05.280(3) are the basis of
2 commitment, then the period of treatment may be up to but not exceed
3 one hundred eighty days from the date of judgment in a facility
4 certified for one hundred eighty day treatment by the department.

5 (b) If the committed person has a developmental disability and has
6 been determined incompetent pursuant to RCW (~~(10.77.086(4))~~)
7 10.77.084(1)(c), and the best interests of the person or others will
8 not be served by a less-restrictive treatment which is an alternative
9 to detention, the court shall remand him or her to the custody of the
10 department or to a facility certified for one hundred eighty-day
11 treatment by the department. When appropriate and subject to available
12 funds, treatment and training of such persons must be provided in a
13 program specifically reserved for the treatment and training of persons
14 with developmental disabilities. A person so committed shall receive
15 habilitation services pursuant to an individualized service plan
16 specifically developed to treat the behavior which was the subject of
17 the criminal proceedings. The treatment program shall be administered
18 by developmental disabilities professionals and others trained
19 specifically in the needs of persons with developmental disabilities.
20 The department may limit admissions to this specialized program in
21 order to ensure that expenditures for services do not exceed amounts
22 appropriated by the legislature and allocated by the department for
23 such services. The department may establish admission priorities in
24 the event that the number of eligible persons exceeds the limits set by
25 the department. An order for treatment less restrictive than
26 involuntary detention may include conditions, and if such conditions
27 are not adhered to, the designated mental health professional or
28 developmental disabilities professional may order the person
29 apprehended under the terms and conditions of RCW 71.05.340.

30 (2) If the court or jury finds that grounds set forth in RCW
31 71.05.280 have been proven, but finds that treatment less restrictive
32 than detention will be in the best interest of the person or others,
33 then the court shall remand him or her to the custody of the department
34 or to a facility certified for ninety day treatment by the department
35 or to a less restrictive alternative for a further period of less
36 restrictive treatment not to exceed ninety days from the date of
37 judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3)

1 are the basis of commitment, then the period of treatment may be up to
2 but not exceed one hundred eighty days from the date of judgment.

3 (3) The person shall be released from involuntary treatment at the
4 expiration of the period of commitment imposed under subsection (1) or
5 (2) of this section unless the superintendent or professional person in
6 charge of the facility in which he or she is confined, or in the event
7 of a less restrictive alternative, the designated mental health
8 professional or developmental disabilities professional, files a new
9 petition for involuntary treatment on the grounds that the committed
10 person;

11 (a) During the current period of court ordered treatment: (i) Has
12 threatened, attempted, or inflicted physical harm upon the person of
13 another, or substantial damage upon the property of another, and (ii)
14 as a result of mental disorder or developmental disability presents a
15 likelihood of serious harm; or

16 (b) Was taken into custody as a result of conduct in which he or
17 she attempted or inflicted serious physical harm upon the person of
18 another, and continues to present, as a result of mental disorder or
19 developmental disability a likelihood of serious harm; or

20 (c) Is in custody pursuant to RCW 71.05.280(3) and as a result of
21 mental disorder or developmental disability presents a substantial
22 likelihood of repeating similar acts considering the charged criminal
23 behavior, life history, progress in treatment, and the public safety;
24 or

25 (d) Continues to be gravely disabled.

26 If the conduct required to be proven in (b) and (c) of this
27 subsection was found by a judge or jury in a prior trial under this
28 chapter, it shall not be necessary to reprove that element. Such new
29 petition for involuntary treatment shall be filed and heard in the
30 superior court of the county of the facility which is filing the new
31 petition for involuntary treatment unless good cause is shown for a
32 change of venue. The cost of the proceedings shall be borne by the
33 state.

34 The hearing shall be held as provided in RCW 71.05.310, and if the
35 court or jury finds that the grounds for additional confinement as set
36 forth in this subsection are present, the court may order the committed
37 person returned for an additional period of treatment not to exceed one
38 hundred eighty days from the date of judgment. At the end of the one

1 hundred eighty day period of commitment, the committed person shall be
2 released unless a petition for another one hundred eighty day period of
3 continued treatment is filed and heard in the same manner as provided
4 in this subsection. Successive one hundred eighty day commitments are
5 permissible on the same grounds and pursuant to the same procedures as
6 the original one hundred eighty day commitment.

7 (4) No person committed as provided in this section may be detained
8 unless a valid order of commitment is in effect. No order of
9 commitment can exceed one hundred eighty days in length.

10 **Sec. 206.** RCW 71.05.425 and 2008 c 213 s 10 are each amended to
11 read as follows:

12 (1)(a) Except as provided in subsection (2) of this section, at the
13 earliest possible date, and in no event later than thirty days before
14 conditional release, final release, authorized leave under RCW
15 71.05.325(2), or transfer to a facility other than a state mental
16 hospital, the superintendent shall send written notice of conditional
17 release, release, authorized leave, or transfer of a person committed
18 under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex,
19 violent, or felony harassment offense pursuant to RCW (~~(10.77.086(4))~~)
20 10.77.084(1)(c) to the following:

21 (i) The chief of police of the city, if any, in which the person
22 will reside; and

23 (ii) The sheriff of the county in which the person will reside.

24 (b) The same notice as required by (a) of this subsection shall be
25 sent to the following, if such notice has been requested in writing
26 about a specific person committed under RCW 71.05.280(3) or
27 71.05.320(3)(c) following dismissal of a sex, violent, or felony
28 harassment offense pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c):

29 (i) The victim of the sex, violent, or felony harassment offense
30 that was dismissed pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c)
31 preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the
32 victim's next of kin if the crime was a homicide;

33 (ii) Any witnesses who testified against the person in any court
34 proceedings; and

35 (iii) Any person specified in writing by the prosecuting attorney.
36 Information regarding victims, next of kin, or witnesses requesting the
37 notice, information regarding any other person specified in writing by

1 the prosecuting attorney to receive the notice, and the notice are
2 confidential and shall not be available to the person committed under
3 this chapter.

4 (c) The thirty-day notice requirements contained in this subsection
5 shall not apply to emergency medical transfers.

6 (d) The existence of the notice requirements in this subsection
7 will not require any extension of the release date in the event the
8 release plan changes after notification.

9 (2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c)
10 following dismissal of a sex, violent, or felony harassment offense
11 pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c) escapes, the
12 superintendent shall immediately notify, by the most reasonable and
13 expedient means available, the chief of police of the city and the
14 sheriff of the county in which the person resided immediately before
15 the person's arrest. If previously requested, the superintendent shall
16 also notify the witnesses and the victim of the sex, violent, or felony
17 harassment offense that was dismissed pursuant to RCW (~~(10.77.086(4))~~)
18 10.77.084(1)(c) preceding commitment under RCW 71.05.280(3) or
19 71.05.320(3) or the victim's next of kin if the crime was a homicide.
20 In addition, the secretary shall also notify appropriate parties
21 pursuant to RCW 71.05.390(18). If the person is recaptured, the
22 superintendent shall send notice to the persons designated in this
23 subsection as soon as possible but in no event later than two working
24 days after the department learns of such recapture.

25 (3) If the victim, the victim's next of kin, or any witness is
26 under the age of sixteen, the notice required by this section shall be
27 sent to the parent or legal guardian of the child.

28 (4) The superintendent shall send the notices required by this
29 chapter to the last address provided to the department by the
30 requesting party. The requesting party shall furnish the department
31 with a current address.

32 (5) For purposes of this section the following terms have the
33 following meanings:

34 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

35 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

36 (c) "Next of kin" means a person's spouse, parents, siblings, and
37 children;

1 (d) "Felony harassment offense" means a crime of harassment as
2 defined in RCW 9A.46.060 that is a felony.

3 **Sec. 207.** RCW 71.09.025 and 2008 c 213 s 11 are each amended to
4 read as follows:

5 (1)(a) When it appears that a person may meet the criteria of a
6 sexually violent predator as defined in RCW 71.09.020(16), the agency
7 with jurisdiction shall refer the person in writing to the prosecuting
8 attorney of the county where that person was charged, three months
9 prior to:

10 (i) The anticipated release from total confinement of a person who
11 has been convicted of a sexually violent offense;

12 (ii) The anticipated release from total confinement of a person
13 found to have committed a sexually violent offense as a juvenile;

14 (iii) Release of a person who has been charged with a sexually
15 violent offense and who has been determined to be incompetent to stand
16 trial pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c); or

17 (iv) Release of a person who has been found not guilty by reason of
18 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

19 (b) The agency shall provide the prosecutor with all relevant
20 information including but not limited to the following information:

21 (i) A complete copy of the institutional records compiled by the
22 department of corrections relating to the person, and any such out-of-
23 state department of corrections' records, if available;

24 (ii) A complete copy, if applicable, of any file compiled by the
25 indeterminate sentence review board relating to the person;

26 (iii) All records relating to the psychological or psychiatric
27 evaluation and/or treatment of the person;

28 (iv) A current record of all prior arrests and convictions, and
29 full police case reports relating to those arrests and convictions; and

30 (v) A current mental health evaluation or mental health records
31 review.

32 (2) This section applies to acts committed before, on, or after
33 March 26, 1992.

34 (3) The agency, its employees, and officials shall be immune from
35 liability for any good-faith conduct under this section.

36 (4) As used in this section, "agency with jurisdiction" means that
37 agency with the authority to direct the release of a person serving a

1 sentence or term of confinement and includes the department of
2 corrections, the indeterminate sentence review board, and the
3 department of social and health services.

4 **Sec. 208.** RCW 71.09.030 and 2008 c 213 s 12 are each amended to
5 read as follows:

6 When it appears that: (1) A person who at any time previously has
7 been convicted of a sexually violent offense is about to be released
8 from total confinement on, before, or after July 1, 1990; (2) a person
9 found to have committed a sexually violent offense as a juvenile is
10 about to be released from total confinement on, before, or after July
11 1, 1990; (3) a person who has been charged with a sexually violent
12 offense and who has been determined to be incompetent to stand trial is
13 about to be released, or has been released on, before, or after July 1,
14 1990, pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c); (4) a person
15 who has been found not guilty by reason of insanity of a sexually
16 violent offense is about to be released, or has been released on,
17 before, or after July 1, 1990, pursuant to RCW 10.77.020(3), 10.77.110
18 (1) or (3), or 10.77.150; or (5) a person who at any time previously
19 has been convicted of a sexually violent offense and has since been
20 released from total confinement and has committed a recent overt act;
21 and it appears that the person may be a sexually violent predator, the
22 prosecuting attorney of the county where the person was convicted or
23 charged or the attorney general if requested by the prosecuting
24 attorney may file a petition alleging that the person is a "sexually
25 violent predator" and stating sufficient facts to support such
26 allegation.

27 **Sec. 209.** RCW 71.09.060 and 2008 c 213 s 13 are each amended to
28 read as follows:

29 (1) The court or jury shall determine whether, beyond a reasonable
30 doubt, the person is a sexually violent predator. In determining
31 whether or not the person would be likely to engage in predatory acts
32 of sexual violence if not confined in a secure facility, the fact
33 finder may consider only placement conditions and voluntary treatment
34 options that would exist for the person if unconditionally released
35 from detention on the sexually violent predator petition. The
36 community protection program under RCW 71A.12.230 may not be considered

1 as a placement condition or treatment option available to the person if
2 unconditionally released from detention on a sexually violent predator
3 petition. When the determination is made by a jury, the verdict must
4 be unanimous.

5 If, on the date that the petition is filed, the person was living
6 in the community after release from custody, the state must also prove
7 beyond a reasonable doubt that the person had committed a recent overt
8 act. If the state alleges that the prior sexually violent offense that
9 forms the basis for the petition for commitment was an act that was
10 sexually motivated as provided in RCW 71.09.020(15)(c), the state must
11 prove beyond a reasonable doubt that the alleged sexually violent act
12 was sexually motivated as defined in RCW 9.94A.030.

13 If the court or jury determines that the person is a sexually
14 violent predator, the person shall be committed to the custody of the
15 department of social and health services for placement in a secure
16 facility operated by the department of social and health services for
17 control, care, and treatment until such time as: (a) The person's
18 condition has so changed that the person no longer meets the definition
19 of a sexually violent predator; or (b) conditional release to a less
20 restrictive alternative as set forth in RCW 71.09.092 is in the best
21 interest of the person and conditions can be imposed that would
22 adequately protect the community.

23 If the court or unanimous jury decides that the state has not met
24 its burden of proving that the person is a sexually violent predator,
25 the court shall direct the person's release.

26 If the jury is unable to reach a unanimous verdict, the court shall
27 declare a mistrial and set a retrial within forty-five days of the date
28 of the mistrial unless the prosecuting agency earlier moves to dismiss
29 the petition. The retrial may be continued upon the request of either
30 party accompanied by a showing of good cause, or by the court on its
31 own motion in the due administration of justice provided that the
32 respondent will not be substantially prejudiced. In no event may the
33 person be released from confinement prior to retrial or dismissal of
34 the case.

35 (2) If the person charged with a sexually violent offense has been
36 found incompetent to stand trial, and is about to (~~(be)~~) be or has
37 been released pursuant to RCW (~~(10.77.086(4))~~) 10.77.084(1)(c), and his
38 or her commitment is sought pursuant to subsection (1) of this section,

1 the court shall first hear evidence and determine whether the person
2 did commit the act or acts charged if the court did not enter a finding
3 prior to dismissal under RCW (~~(10.77.086(4))~~) 10.77.084(1)(c) that the
4 person committed the act or acts charged. The hearing on this issue
5 must comply with all the procedures specified in this section. In
6 addition, the rules of evidence applicable in criminal cases shall
7 apply, and all constitutional rights available to defendants at
8 criminal trials, other than the right not to be tried while
9 incompetent, shall apply. After hearing evidence on this issue, the
10 court shall make specific findings on whether the person did commit the
11 act or acts charged, the extent to which the person's incompetence or
12 developmental disability affected the outcome of the hearing, including
13 its effect on the person's ability to consult with and assist counsel
14 and to testify on his or her own behalf, the extent to which the
15 evidence could be reconstructed without the assistance of the person,
16 and the strength of the prosecution's case. If, after the conclusion
17 of the hearing on this issue, the court finds, beyond a reasonable
18 doubt, that the person did commit the act or acts charged, it shall
19 enter a final order, appealable by the person, on that issue, and may
20 proceed to consider whether the person should be committed pursuant to
21 this section.

22 (3) The state shall comply with RCW 10.77.220 while confining the
23 person pursuant to this chapter, except that during all court
24 proceedings the person shall be detained in a secure facility. The
25 department shall not place the person, even temporarily, in a facility
26 on the grounds of any state mental facility or regional habilitation
27 center because these institutions are insufficiently secure for this
28 population.

29 (4) A court has jurisdiction to order a less restrictive
30 alternative placement only after a hearing ordered pursuant to RCW
31 71.09.090 following initial commitment under this section and in accord
32 with the provisions of this chapter.

33 **PART III**
34 **MISCELLANEOUS**

35 NEW SECTION. **Sec. 301.** Part headings used in this act are not any
36 part of the law.

1 NEW SECTION. **Sec. 302.** Sections 101 and 102 of this act apply
2 only to counties with a population greater than one million five
3 hundred persons.

4 NEW SECTION. **Sec. 303.** Sections 101 and 102 of this act expire
5 June 30, 2011."

6 Correct the title.

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