
SUBSTITUTE SENATE BILL 6492

State of Washington 62nd Legislature 2012 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Stevens, and Regala)

READ FIRST TIME 02/03/12.

1 AN ACT Relating to improving timeliness, efficiency, and
2 accountability of forensic resource utilization associated with
3 competency to stand trial; amending RCW 10.77.060, 10.77.065,
4 10.77.084, 10.77.086, and 71.05.310; adding new sections to chapter
5 10.77 RCW; creating new sections; providing an effective date; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The purpose of this act is to sustainably
9 improve the timeliness of services related to competency to stand trial
10 by setting performance expectations, establishing new mechanisms for
11 accountability, and enacting reforms to ensure that forensic resources
12 are expended in an efficient and clinically appropriate manner without
13 diminishing the quality of competency services, and to reduce the time
14 defendants with mental illness spend in jail awaiting evaluation and
15 restoration of competency.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.77 RCW
17 to read as follows:

18 (1)(a) The legislature establishes the following performance

1 targets for the timeliness of the completion of accurate and reliable
2 evaluations of competency to stand trial and admissions for inpatient
3 services related to competency to stand trial for adult criminal
4 defendants. The legislature recognizes that these targets may not be
5 achievable in all cases without compromise to quality of evaluation
6 services, but intends for the department to manage, allocate, and
7 request appropriations for resources in order to meet these targets
8 whenever possible without sacrificing the accuracy of competency
9 evaluations, and to otherwise make sustainable improvements and track
10 performance related to the timeliness of competency services:

11 (i) For a state hospital to extend an offer of admission to a
12 defendant in pretrial custody for legally authorized treatment or
13 evaluation services related to competency, or to extend an offer of
14 admission for legally authorized services following dismissal of
15 charges based on incompetent to proceed or stand trial, seven days or
16 less;

17 (ii) For completion of a competency evaluation in jail and
18 distribution of the evaluation report for a defendant in pretrial
19 custody, seven days or less;

20 (iii) For completion of a competency evaluation in the community
21 and distribution of the evaluation report for a defendant who is
22 released from custody and makes a reasonable effort to cooperate with
23 the evaluation, twenty-one days or less.

24 (b) The time periods measured in these performance targets shall
25 run from the date on which the state hospital receives the court
26 referral and charging documents, discovery, and criminal history
27 information related to the defendant. The targets in (a)(i) and (ii)
28 of this subsection shall be phased in over a six-month period from the
29 effective date of this section. The target in (a)(iii) of this
30 subsection shall be phased in over a twelve-month period from the
31 effective date of this section.

32 (c) The legislature recognizes the following nonexclusive list of
33 circumstances which may place achievement of targets for completion of
34 competency services described in (a) of this subsection out of the
35 department's reach in an individual case without aspersion to the
36 efforts of the department:

37 (i) Despite a timely request, the department has not received

1 necessary medical clearance information regarding the current medical
2 status of a defendant in pretrial custody for the purposes of admission
3 to a state hospital;

4 (ii) The individual circumstances of the defendant make accurate
5 completion of an evaluation of competency to proceed or stand trial
6 dependent upon review of medical history information which is in the
7 custody of a third party and cannot be immediately obtained by the
8 department. Completion of a competency evaluation shall not be
9 postponed for procurement of medical history information which is
10 merely supplementary to the competency determination;

11 (iii) Completion of the referral is frustrated by lack of
12 availability or participation by counsel, jail or court personnel,
13 interpreters, or the defendant; or

14 (iv) An unusual spike in the receipt of evaluation referrals or in
15 the number of defendants requiring restoration services has occurred,
16 causing temporary delays until the unexpected excess demand for
17 competency services can be resolved.

18 (2) The department shall:

19 (a) Develop, document, and implement procedures to monitor the
20 clinical status of defendants admitted to a state hospital for
21 competency services that allow the state hospital to accomplish early
22 discharge for defendants for whom clinical objectives have been
23 achieved or may be achieved before expiration of the commitment period;

24 (b) Investigate the extent to which patients admitted to a state
25 hospital under this chapter overstay time periods authorized by law and
26 take reasonable steps to limit the time of commitment to authorized
27 periods; and

28 (c) Establish written standards for the productivity of forensic
29 evaluators and utilize these standards to internally review the
30 performance of forensic evaluators.

31 (3) Following any quarter in which a state hospital has failed to
32 meet one or more of the performance targets in subsection (1) of this
33 section after full implementation of the performance target, the
34 department shall report the extent of this deviation to the executive
35 and legislature and describe any corrective action being taken to
36 improve performance. This report shall be made publicly available. An
37 average may be used to determine timeliness under this subsection.

1 (4) Beginning December 1, 2013, the department shall report
2 annually on the timeliness of services related to competency to proceed
3 or stand trial in a form which is accessible to the public and which
4 breaks down performance by county. The department shall also track the
5 timeliness by county with which court referrals accompanied by charging
6 documents, discovery, and criminal history information are provided to
7 the department relative to the signature date of the court order and
8 include this information in the annual report.

9 (5) This section does not create any new entitlement or cause of
10 action related to the timeliness of competency evaluations or admission
11 for inpatient services related to competency to proceed or stand trial,
12 nor can it form the basis for contempt sanctions under chapter 7.21 RCW
13 or a motion to dismiss criminal charges.

14 **Sec. 3.** RCW 10.77.060 and 2004 c 9 s 1 are each amended to read as
15 follows:

16 (1)(a) Whenever a defendant has pleaded not guilty by reason of
17 insanity, or there is reason to doubt his or her competency, the court
18 on its own motion or on the motion of any party shall either appoint or
19 request the secretary to designate ~~((at least two))~~ a qualified
20 expert~~((s))~~ or professional person~~((s))~~, ~~((one of whom))~~ who shall be
21 approved by the prosecuting attorney, to ~~((examine))~~ evaluate and
22 report upon the mental condition of the defendant.

23 (b) The signed order of the court shall serve as authority for the
24 ~~((experts))~~ evaluator to be given access to all records held by any
25 mental health, medical, educational, or correctional facility that
26 relate to the present or past mental, emotional, or physical condition
27 of the defendant. ~~((At least one of the experts or professional
28 persons appointed shall be a developmental disabilities professional))~~
29 If the court is advised by any party that the defendant may ((be
30 developmentally disabled)) have a developmental disability, the
31 evaluation must be performed by a developmental disabilities
32 professional. ((Upon agreement of the parties, the court may designate
33 one expert or professional person to conduct the examination and report
34 on the mental condition of the defendant. For purposes of the
35 examination, the court may order))

36 (c) The evaluator shall assess the defendant in a jail, detention
37 facility, in the community, or in court to determine whether a period

1 of inpatient commitment will be necessary to complete an accurate
2 evaluation. If inpatient commitment is needed, the signed order of the
3 court shall serve as authority for the evaluator to request the jail or
4 detention facility to transport the defendant (~~(committed)~~) to a
5 hospital or (~~(other suitably)~~) secure (~~(public or private)~~) mental
6 health facility for a period of (~~(time necessary to complete the~~
7 examination, but)) commitment not to exceed fifteen days from the time
8 of admission to the facility. Otherwise, the evaluator shall complete
9 the evaluation.

10 (d) The court may commit the defendant for evaluation to a hospital
11 or secure mental health facility without an assessment if the defendant
12 is charged with murder in the first or second degree or if the court
13 finds that it is more likely than not that an evaluation in the jail
14 will be inadequate to complete an accurate evaluation. The court shall
15 not order an initial inpatient evaluation for any purpose other than a
16 competency evaluation. (~~(If the defendant is being held in jail or~~
17 other detention facility, upon agreement of the parties, the court may
18 direct that the examination be conducted at the jail or other detention
19 facility.

20 ~~(b))~~ (e) The order shall indicate whether, in the event the
21 defendant is committed to a hospital or secure mental health facility
22 for evaluation, all parties agree to waive the presence of the
23 defendant or to the defendant's remote participation at a subsequent
24 competency hearing or presentation of an agreed order if the
25 recommendation of the evaluator is for continuation of the stay of
26 criminal proceedings, or if the opinion of the evaluator is that the
27 defendant remains incompetent and there is no remaining restoration
28 period, and the hearing is held prior to the expiration of the
29 authorized commitment period.

30 (f) When a defendant is ordered to be committed for inpatient
31 examination under this subsection (1), the court may delay granting
32 bail until the defendant has been evaluated for competency or sanity
33 and appears before the court. Following the evaluation, in determining
34 bail the court shall consider: (i) Recommendations of the (~~(expert or~~
35 professional persons)) evaluator regarding the defendant's competency,
36 sanity, or diminished capacity; (ii) whether the defendant has a recent
37 history of one or more violent acts; (iii) whether the defendant has
38 previously been acquitted by reason of insanity or found incompetent;

1 (iv) whether it is reasonably likely the defendant will fail to appear
2 for a future court hearing; and (v) whether the defendant is a threat
3 to public safety.

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

14 (3) The report of the examination shall include the following:

15 (a) A description of the nature of the examination;

16 (b) A diagnosis or description of the current mental (~~condition~~)
17 status of the defendant;

18 (c) If the defendant suffers from a mental disease or defect, or
19 (~~is developmentally disabled~~) has a developmental disability, an
20 opinion as to competency;

21 (d) If the defendant has indicated his or her intention to rely on
22 the defense of insanity pursuant to RCW 10.77.030, and an evaluation
23 and report by an expert or professional person has been provided
24 concluding that the defendant was criminally insane at the time of the
25 alleged offense, an opinion as to the defendant's sanity at the time of
26 the act, and an opinion as to whether the defendant presents a
27 substantial danger to other persons, or presents a substantial
28 likelihood of committing criminal acts jeopardizing public safety or
29 security, unless kept under further control by the court or other
30 persons or institutions, provided that no opinion shall be rendered
31 under this subsection (3)(d) unless the evaluator or court determines
32 that the defendant is competent to stand trial;

33 (e) When directed by the court, if an evaluation and report by an
34 expert or professional person has been provided concluding that the
35 defendant lacked the capacity at the time of the offense to form the
36 mental state necessary to commit the charged offense, an opinion as to
37 the capacity of the defendant to have a particular state of mind which
38 is an element of the offense charged;

1 (f) An opinion as to whether the defendant should be evaluated by
2 a ((county)) designated mental health professional under chapter 71.05
3 RCW(~~, and an opinion as to whether the defendant is a substantial~~
4 ~~danger to other persons, or presents a substantial likelihood of~~
5 ~~committing criminal acts jeopardizing public safety or security, unless~~
6 ~~kept under further control by the court or other persons or~~
7 ~~institutions)).~~

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

11 **Sec. 4.** RCW 10.77.065 and 2008 c 213 s 1 are each amended to read
12 as follows:

13 (1)(a)(i) The ((facility)) expert conducting the evaluation shall
14 provide ((its)) his or her report and recommendation to the court in
15 which the criminal proceeding is pending. For a competency evaluation
16 of a defendant who is released from custody, if the evaluation cannot
17 be completed within twenty-one days due to a lack of cooperation by the
18 defendant, the evaluator shall notify the court that he or she is
19 unable to complete the evaluation because of such lack of cooperation.

20 (ii) A copy of the report and recommendation shall be provided to
21 the designated mental health professional, the prosecuting attorney,
22 the defense attorney, and the professional person at the local
23 correctional facility where the defendant is being held, or if there is
24 no professional person, to the person designated under (a)((+ii)) (iv)
25 of this subsection. Upon request, the ((facility)) evaluator shall
26 also provide copies of any source documents relevant to the evaluation
27 to the designated mental health professional. ~~((The report and~~
28 ~~recommendation shall be provided not less than twenty-four hours~~
29 ~~preceding the transfer of the defendant to the correctional facility in~~
30 ~~the county in which the criminal proceeding is pending.~~

31 ~~(+ii))~~ (iii) Any facility providing inpatient services related to
32 competency shall discharge the defendant as soon as the facility
33 determines that the defendant is competent to stand trial. Discharge
34 shall not be postponed during the writing and distribution of the
35 evaluation report. Distribution of an evaluation report by a facility
36 providing inpatient services shall ordinarily be accomplished within
37 two working days or less following the final evaluation of the

1 defendant. If the defendant is detained in a local correctional
2 facility, the local correctional facility must continue the medication
3 regimen prescribed by the hospital, when clinically appropriate, unless
4 the defendant refuses to cooperate with medication.

5 (iv) If there is no professional person at the local correctional
6 facility, the local correctional facility shall designate a
7 professional person as defined in RCW 71.05.020 or, in cooperation with
8 the regional support network, a professional person at the regional
9 support network to receive the report and recommendation.

10 ~~((iii) When a defendant is transferred to the facility conducting~~
11 ~~the evaluation, or)) (v) Upon commencement of a defendant's evaluation~~
12 in the local correctional facility, the local correctional facility
13 must notify the evaluator ~~((or the facility conducting the evaluation))~~
14 of the name of the professional person, or person designated under
15 (a)~~((ii))~~ (iv) of this subsection, to receive the report and
16 recommendation.

17 (b) If the ~~((facility))~~ evaluator concludes, under RCW
18 10.77.060(3)(f), the person should be ~~((kept under further control, an~~
19 ~~evaluation shall be conducted of such person))~~ evaluated by a
20 designated mental health professional under chapter 71.05 RCW~~((-))~~, the
21 court shall order ~~((an))~~ such evaluation be conducted ~~((by the~~
22 ~~appropriate designated mental health professional: (i))~~ prior to
23 release from confinement ~~((for such person who is convicted, if~~
24 ~~sentenced to confinement for twenty-four months or less; (ii) for any~~
25 ~~person who is acquitted; or (iii) for any person: (A) Whose charges~~
26 ~~are dismissed pursuant to RCW 10.77.086(4); or (B) whose nonfelony~~
27 ~~charges are dismissed))~~ when the person is acquitted, convicted and
28 sentenced to confinement for twenty-four months or less, or charges are
29 dismissed pursuant to a finding of incompetent to stand trial.

30 (2) The designated mental health professional shall provide written
31 notification within twenty-four hours of the results of the
32 determination whether to commence proceedings under chapter 71.05 RCW.
33 The notification shall be provided to the persons identified in
34 subsection (1)(a) of this section.

35 (3) The prosecuting attorney shall provide a copy of the results of
36 any proceedings commenced by the designated mental health professional
37 under subsection (2) of this section to the ~~((facility conducting the~~
38 ~~evaluation under this chapter))~~ secretary.

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

6 **Sec. 5.** RCW 10.77.084 and 2007 c 375 s 3 are each amended to read
7 as follows:

8 (1)(a) If at any time during the pendency of an action and prior to
9 judgment the court finds, following a report as provided in RCW
10 10.77.060, a defendant is incompetent, the court shall order the
11 proceedings against the defendant be stayed except as provided in
12 subsection (4) of this section.

13 ~~(b) ((A defendant found incompetent shall be evaluated at the~~
14 ~~direction of the secretary and a determination made whether the~~
15 ~~defendant is an individual with a developmental disability. Such~~
16 ~~evaluation and determination shall be accomplished as soon as possible~~
17 ~~following the court's placement of the defendant in the custody of the~~
18 ~~secretary.~~

19 ~~(i) When appropriate, and subject to available funds, if the~~
20 ~~defendant is determined to be an individual with a developmental~~
21 ~~disability, he or she may be placed in a program specifically reserved~~
22 ~~for the treatment and training of persons with developmental~~
23 ~~disabilities where the defendant shall have the right to habilitation~~
24 ~~according to an individualized service plan specifically developed for~~
25 ~~the particular needs of the defendant. A copy of the evaluation shall~~
26 ~~be sent to the program.~~

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

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

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

35 ~~(ii) The department may limit admissions of such persons to this~~
36 ~~specialized program in order to ensure that expenditures for services~~

1 do not exceed amounts appropriated by the legislature and allocated by
2 the department for such services.

3 ~~(iii) The department may establish admission priorities in the~~
4 ~~event that the number of eligible persons exceeds the limits set by the~~
5 ~~department.~~

6 (e)) At the end of the mental health treatment and restoration
7 period, if any, or at any time a professional person determines
8 competency has been, or is unlikely to be, restored, the defendant
9 shall be returned to court for a hearing. The parties may agree to
10 waive the defendant's presence or to remote participation by the
11 defendant at a hearing or presentation of an agreed order if the
12 recommendation of the evaluator is for the continuation of the stay of
13 criminal proceedings, or if the opinion of the evaluator is that the
14 defendant remains incompetent and there is no remaining restoration
15 period, and the hearing is held prior to expiration of the defendant's
16 authorized period of commitment, in which case the department shall
17 promptly notify the court and parties of the date of the defendant's
18 admission and expiration of commitment so that a timely hearing date
19 may be scheduled. If, after notice and hearing, competency has been
20 restored, the stay entered under (a) of this subsection shall be
21 lifted. If competency has not been restored, the proceedings shall be
22 dismissed without prejudice. If the court concludes that competency
23 has not been restored, but that further treatment within the time
24 limits established by RCW 10.77.086 or 10.77.088 is likely to restore
25 competency, the court may order that treatment for purposes of
26 competency restoration be continued. Such treatment may not extend
27 beyond the combination of time provided for in RCW 10.77.086 or
28 10.77.088.

29 ((~~d~~)) (c) If at any time during the proceeding the court finds,
30 following notice and hearing, a defendant is not likely to regain
31 competency, the proceedings shall be dismissed without prejudice and
32 the defendant shall be evaluated for civil commitment proceedings.

33 (2) If the defendant is referred ((~~to the~~)) for evaluation by a
34 designated mental health professional ((for consideration of initial
35 detention proceedings under chapter 71.05 RCW pursuant to)) under this
36 chapter, the designated mental health professional shall provide prompt
37 written notification of the results of the ((~~determination whether to~~
38 ~~commence initial detention proceedings under chapter 71.05 RCW~~))

1 evaluation and whether the person was detained. The notification shall
2 be provided to the court in which the criminal action was pending, the
3 prosecutor, the defense attorney in the criminal action, and the
4 facility that evaluated the defendant for competency.

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

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

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

23 **Sec. 6.** RCW 10.77.086 and 2007 c 375 s 4 are each amended to read
24 as follows:

25 (1)(a) If the defendant is charged with a felony and determined to
26 be incompetent, until he or she has regained the competency necessary
27 to understand the proceedings against him or her and assist in his or
28 her own defense, or has been determined unlikely to regain competency
29 pursuant to RCW 10.77.084(1)((+e)) (b), but in any event for a period
30 of no longer than ninety days, the court:

31 ((+a)) (i) Shall commit the defendant to the custody of the
32 secretary who shall place such defendant in an appropriate facility of
33 the department for evaluation and treatment; or

34 ((+b)) (ii) May alternatively order the defendant to undergo
35 evaluation and treatment at some other facility as determined by the
36 department, or under the guidance and control of a professional person.

1 (b) For a defendant whose highest charge is a class C felony, or a
2 class B felony which is not classified as violent under RCW 9.94A.030,
3 the maximum time allowed for the first competency restoration period is
4 forty-five days.

5 (2) On or before expiration of the initial (~~ninety-day~~) period of
6 commitment under subsection (1) of this section the court shall conduct
7 a hearing, at which it shall determine whether or not the defendant is
8 incompetent.

9 (3) If the court finds by a preponderance of the evidence that a
10 defendant charged with a felony is incompetent, the court shall have
11 the option of extending the order of commitment or alternative
12 treatment for an additional (~~ninety-day~~) period of ninety days, but
13 the court must at the time of extension set a date for a prompt hearing
14 to determine the defendant's competency before the expiration of the
15 second (~~ninety-day~~) restoration period. The defendant, the
16 defendant's attorney, or the prosecutor has the right to demand that
17 the hearing be before a jury. No extension shall be ordered for a
18 second (~~ninety-day~~) or third restoration period(~~(, nor for any~~
19 ~~subsequent period)~~) as provided in subsection (4) of this section(~~(7)~~)
20 if the defendant's incompetence has been determined by the secretary to
21 be solely the result of a developmental disability which is such that
22 competence is not reasonably likely to be regained during an extension.

23 (4) For persons charged with a felony, at the hearing upon the
24 expiration of the second (~~ninety-day~~) restoration period or at the
25 end of the first (~~ninety-day~~) restoration period, in the case of a
26 defendant with a developmental disability, if the jury or court finds
27 that the defendant is incompetent, the charges shall be dismissed
28 without prejudice, and (~~either civil commitment proceedings shall be~~
29 ~~instituted or~~) the court shall either order the release of the
30 defendant or order the defendant be committed to a hospital or secure
31 mental health facility for up to seventy-two hours starting from
32 admission to the facility, excluding Saturdays, Sundays, and holidays,
33 for evaluation for the purpose of filing a civil commitment petition.
34 The criminal charges shall not be dismissed if the court or jury finds
35 that: (a) The defendant (i) is a substantial danger to other persons;
36 or (ii) presents a substantial likelihood of committing criminal acts
37 jeopardizing public safety or security; and (b) there is a substantial
38 probability that the defendant will regain competency within a

1 reasonable period of time. In the event that the court or jury makes
2 such a finding, the court may extend the period of commitment for up to
3 an additional six months.

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

6 (1) A defendant found incompetent by the court under RCW 10.77.084
7 must be evaluated at the direction of the secretary and a determination
8 made whether the defendant is an individual with a developmental
9 disability. Such evaluation and determination must be accomplished as
10 soon as possible following the court's placement of the defendant in
11 the custody of the secretary.

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

20 (a) The program must be separate from programs serving persons
21 involved in any other treatment or habilitation program.

22 (b) The program must be appropriately secure under the
23 circumstances and must be administered by developmental disabilities
24 professionals who shall direct the habilitation efforts.

25 (c) The program must provide an environment affording security
26 appropriate with the charged criminal behavior and necessary to protect
27 the public safety.

28 (3) The department may limit admissions of such persons to this
29 specialized program in order to ensure that expenditures for services
30 do not exceed amounts appropriated by the legislature and allocated by
31 the department for such services.

32 (4) The department may establish admission priorities in the event
33 that the number of eligible persons exceeds the limits set by the
34 department.

35 **Sec. 8.** RCW 71.05.310 and 2005 c 504 s 709 are each amended to
36 read as follows:

1 The court shall conduct a hearing on the petition for ninety-day
2 treatment within five judicial days of the first court appearance after
3 the probable cause hearing, or within ten judicial days for a petition
4 filed under RCW 71.05.280(3). The court may continue the hearing for
5 good cause upon the written request of the person named in the petition
6 or the person's attorney((7)). The court may continue for good cause
7 ~~((shown, which continuance shall not exceed five additional judicial~~
8 ~~days))~~ a petition filed under RCW 71.05.280(3) upon written request by
9 the person named in the petition, the person's attorney, or the
10 petitioner. If the person named in the petition requests a jury trial,
11 the trial shall commence within ten judicial days of the first court
12 appearance after the probable cause hearing. The burden of proof shall
13 be by clear, cogent, and convincing evidence and shall be upon the
14 petitioner. The person shall be present at such proceeding, which
15 shall in all respects accord with the constitutional guarantees of due
16 process of law and the rules of evidence pursuant to RCW 71.05.360 (8)
17 and (9).

18 During the proceeding, the person named in the petition shall
19 continue to be treated until released by order of the superior court.
20 If no order has been made within thirty days after the filing of the
21 petition, not including extensions of time requested by the detained
22 person or his or her attorney, or in the case of a petition filed under
23 RCW 71.05.280(3) the petitioner, the detained person shall be released.

24 NEW SECTION. **Sec. 9.** The joint legislative audit and review
25 committee shall make an independent assessment of the performance of
26 the state hospitals with respect to provisions specified in section 2
27 of this act, but shall not be required to independently evaluate the
28 exercise of clinical judgment. A report shall be made to the
29 legislature reflecting the committee's findings and recommendations
30 both six and eighteen months following the effective date of this
31 section. The department of social and health services shall cooperate
32 in a timely manner with requests for data and assistance related to
33 this assessment.

34 NEW SECTION. **Sec. 10.** The Washington state institute for public
35 policy shall study the benefit of standardizing protocols used for
36 treatment to restore competency to stand trial in Washington and during

1 what clinically appropriate time period said treatment may be expected
2 to be effective and report to the legislature. The department of
3 social and health services shall cooperate in a timely manner with data
4 requests in service of this study.

5 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 May 1, 2012.

--- END ---