
SENATE BILL 5114

State of Washington

62nd Legislature

2011 Regular Session

By Senator Hargrove

Read first time 01/14/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to streamlining competency evaluation and
2 competency restoration procedures; amending RCW 10.77.060, 10.77.065,
3 10.77.084, 10.77.088, and 71.05.290; adding a new section to chapter
4 10.77 RCW; creating a new section; and repealing RCW 71.05.235.

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

6 **Sec. 1.** RCW 10.77.060 and 2004 c 9 s 1 are each amended to read as
7 follows:

8 (1)(a) Whenever a defendant has pleaded not guilty by reason of
9 insanity, or there is reason to doubt his or her competency, the court
10 on its own motion or on the motion of any party shall either appoint or
11 request the secretary to designate ~~((at least two))~~ a qualified
12 expert~~((s))~~ or professional person~~((s))~~, ~~((one of whom))~~ who shall be
13 approved by the prosecuting attorney, to examine and report upon the
14 mental condition of the defendant. The signed order of the court shall
15 serve as authority for the expert~~((s))~~ to be given access to all
16 records held by any mental health, medical, educational, or
17 correctional facility that relate to the present or past mental,
18 emotional, or physical condition of the defendant. ~~((At least one of
19 the experts or professional persons appointed shall be a developmental~~

1 ~~disabilities professional))~~ If the court is advised by any party that
2 the defendant may ~~((be developmentally disabled))~~ have a developmental
3 disability, the examination must be performed by or in conjunction with
4 a developmental disabilities professional. ~~((Upon agreement of the~~
5 ~~parties, the court may designate one expert or professional person to~~
6 ~~conduct the examination and report on the mental condition of the~~
7 ~~defendant. For purposes of the examination, the court may order))~~

8 (b) Examinations under this section must occur in the community or
9 in a jail or detention facility. An expert or professional person
10 designated by the secretary may request to have the defendant committed
11 to a hospital or other suitably secure public or private mental health
12 facility for a period of time necessary to complete the examination,
13 but not to exceed fifteen days from the time of admission to the
14 facility, if necessary in order to complete an evaluation. ~~((If the~~
15 ~~defendant is being held in jail or other detention facility, upon~~
16 ~~agreement of the parties, the court may direct that the examination be~~
17 ~~conducted at the jail or other detention facility.~~

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

30 (2) The court may direct that a qualified expert or professional
31 person retained by or appointed for the defendant be permitted to
32 witness the examination authorized by subsection (1) of this section,
33 and that the defendant shall have access to all information obtained by
34 the court appointed expert~~((s))~~ or professional person~~((s))~~. The
35 defendant's expert or professional person shall have the right to file
36 his or her own report following the guidelines of subsection (3) of
37 this section. If the defendant is indigent, the court shall upon the

1 request of the defendant assist him or her in obtaining an expert or
2 professional person.

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

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

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

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

9 (d) If the defendant has indicated his or her intention to rely on
10 the defense of insanity pursuant to RCW 10.77.030, an opinion as to the
11 defendant's sanity at the time of the act;

12 (e) When directed by the court, an opinion as to the capacity of
13 the defendant to have a particular state of mind which is an element of
14 the offense charged;

15 (f) An opinion as to whether the defendant should be evaluated by
16 a (~~county~~) designated mental health professional under chapter 71.05
17 RCW(~~, and an opinion as to whether the defendant is a substantial~~
18 ~~danger to other persons, or presents a substantial likelihood of~~
19 ~~committing criminal acts jeopardizing public safety or security, unless~~
20 ~~kept under further control by the court or other persons or~~
21 ~~institutions~~)).

22 (4) The secretary may execute such agreements as appropriate and
23 necessary to implement this section.

24 **Sec. 2.** RCW 10.77.065 and 2008 c 213 s 1 are each amended to read
25 as follows:

26 (1)(a)(i) The (~~facility~~) expert conducting the evaluation shall
27 provide (~~its~~) his or her report and recommendation to the court in
28 which the criminal proceeding is pending. A copy of the report and
29 recommendation shall be provided to the designated mental health
30 professional, the prosecuting attorney, the defense attorney, and the
31 professional person at the local correctional facility where the
32 defendant is being held, or if there is no professional person, to the
33 person designated under (a)(ii) of this subsection. Upon request, the
34 (~~facility~~) expert shall also provide copies of any source documents
35 relevant to the evaluation to the designated mental health
36 professional. The report and recommendation shall be provided not less

1 than twenty-four hours preceding the transfer of the defendant to the
2 correctional facility in the county in which the criminal proceeding is
3 pending.

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

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

15 (b) If the ~~((facility))~~ expert concludes, under RCW
16 10.77.060(3)(f), the person should be ~~((kept under further control, an
17 evaluation shall be conducted))~~ evaluated by a designated mental health
18 professional, the court shall order the evaluation of such person under
19 chapter 71.05 RCW~~((The court shall order an evaluation be conducted
20 by the appropriate designated mental health professional))~~: (i) Prior
21 to release from confinement for such person who is convicted, if
22 sentenced to confinement for twenty-four months or less; (ii) for any
23 person who is acquitted; or (iii) for any person: (A) Whose charges
24 are dismissed pursuant to RCW 10.77.086(4); or (B) whose nonfelony
25 charges are dismissed.

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

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

35 (4) The fact of admission and all information and records compiled,
36 obtained, or maintained in the course of providing services under this
37 chapter may also be disclosed to the courts solely to prevent the entry

1 of any evaluation or treatment order that is inconsistent with any
2 order entered under chapter 71.05 RCW.

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

5 (1)(a) If at any time during the pendency of an action and prior to
6 judgment the court finds, following a report as provided in RCW
7 10.77.060, a defendant is incompetent, the court shall order the
8 proceedings against the defendant be stayed except as provided in
9 subsection (4) of this section.

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

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

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

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

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

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

36 ~~(iii) The department may establish admission priorities in the~~

1 ~~event that the number of eligible persons exceeds the limits set by the~~
2 ~~department.~~

3 ~~(e))~~ At the end of the mental health treatment and restoration
4 period, if any, or at any time a professional person determines
5 competency has been, or is unlikely to be, restored, the defendant
6 shall be returned to court for a hearing. If, after notice and
7 hearing, competency has been restored, the stay entered under (a) of
8 this subsection shall be lifted. If competency has not been restored,
9 the proceedings shall be dismissed. If the court concludes that
10 competency has not been restored, but that further treatment within the
11 time limits established by RCW 10.77.086 (~~or 10.77.088~~) is likely to
12 restore competency, the court may order that treatment for purposes of
13 competency restoration be continued. Such treatment may not extend
14 beyond the (~~combination of~~) time provided for in RCW 10.77.086 (~~or~~
15 ~~10.77.088~~).

16 ~~((d))~~ (c) If at any time during the proceeding the court finds,
17 following notice and hearing, a defendant is not likely to regain
18 competency, the proceedings shall be dismissed and the defendant shall
19 be evaluated for civil commitment proceedings.

20 (2) If the defendant is referred to the designated mental health
21 professional for consideration of initial detention proceedings under
22 chapter 71.05 RCW pursuant to this chapter, the designated mental
23 health professional shall provide prompt written notification of the
24 results of the determination whether to commence initial detention
25 proceedings under chapter 71.05 RCW and whether the person was
26 detained. The notification shall be provided to the court in which the
27 criminal action was pending, the prosecutor, the defense attorney in
28 the criminal action, and the facility that evaluated the defendant for
29 competency.

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

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

1 (5) At or before the conclusion of any commitment period provided
2 for by this section, the facility providing evaluation and treatment
3 shall provide to the court a written report of examination which meets
4 the requirements of RCW 10.77.060(3).

5 **Sec. 4.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to read
6 as follows:

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

11 ~~(i) At a secure mental health facility in the custody of the~~
12 ~~department or an agency designated by the department for mental health~~
13 ~~treatment and restoration of competency. The placement shall not~~
14 ~~exceed fourteen days in addition to any unused time of the evaluation~~
15 ~~under RCW 10.77.060. The court shall compute this total period and~~
16 ~~include its computation in the order. The fourteen day period plus any~~
17 ~~unused time of the evaluation under RCW 10.77.060 shall be considered~~
18 ~~to include only the time the defendant is actually at the facility and~~
19 ~~shall be in addition to reasonable time for transport to or from the~~
20 ~~facility;~~

21 ~~(ii) On conditional release for up to ninety days for mental health~~
22 ~~treatment and restoration of competency; or~~

23 ~~(iii) Any combination of this subsection.~~

24 ~~(b)(i))~~ the defendant to be evaluated for the purpose of civil
25 commitment pursuant to chapter 71.05 RCW. If the ~~((proceedings are~~
26 ~~dismissed under RCW 10.77.084 and the))~~ defendant was on conditional
27 release at the time of dismissal, the ~~((court shall order the~~
28 ~~designated mental health professional within that county to evaluate~~
29 ~~the defendant pursuant to chapter 71.05 RCW. The))~~ evaluation may be
30 conducted in any location chosen by the designated mental health
31 professional.

32 ~~((ii))~~ (b) If the defendant was in custody ~~((and not on~~
33 ~~conditional release))~~ at the time of dismissal, the defendant shall be
34 detained ~~((and sent to an evaluation and treatment facility))~~ in the
35 custody of the jail or detention center for up to seventy-two hours~~((,~~
36 ~~excluding Saturdays, Sundays, and holidays,))~~ for evaluation for the
37 purposes of ~~((filing a petition under))~~ chapter 71.05 RCW. ~~((The~~

1 ~~seventy two hour period shall commence upon the next nonholiday weekday~~
2 ~~following the court order and shall run to the end of the last~~
3 ~~nonholiday weekday within the seventy two hour period.)~~)

4 (2) If the defendant is charged with a nonfelony crime that is not
5 a serious offense as defined in RCW 10.77.092:

6 The court may stay or dismiss proceedings and detain the defendant
7 for sufficient time to allow the designated mental health professional
8 to evaluate the defendant and consider initial detention proceedings
9 under chapter 71.05 RCW. The court must give notice to all parties at
10 least twenty-four hours before the dismissal of any proceeding under
11 this subsection, and provide an opportunity for a hearing on whether to
12 dismiss the proceedings.

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

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

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

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

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

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

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

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

8 **Sec. 6.** RCW 71.05.290 and 2009 c 217 s 3 are each amended to read
9 as follows:

10 (1) At any time during a person's fourteen day intensive treatment
11 period, the professional person in charge of a treatment facility or
12 his or her professional designee or the designated mental health
13 professional may petition the superior court for an order requiring
14 such person to undergo an additional period of treatment. Such
15 petition must be based on one or more of the grounds set forth in RCW
16 71.05.280.

17 (2) The petition shall summarize the facts which support the need
18 for further confinement and shall be supported by affidavits signed by:

19 (a) Two examining physicians;

20 (b) One examining physician and examining mental health
21 professional;

22 (c) Two psychiatric advanced registered nurse practitioners;

23 (d) One psychiatric advanced registered nurse practitioner and a
24 mental health professional; or

25 (e) An examining physician and an examining psychiatric advanced
26 registered nurse practitioner. The affidavits shall describe in detail
27 the behavior of the detained person which supports the petition and
28 shall explain what, if any, less restrictive treatments which are
29 alternatives to detention are available to such person, and shall state
30 the willingness of the affiant to testify to such facts in subsequent
31 judicial proceedings under this chapter.

32 (3) If a person has been determined to be incompetent pursuant to
33 RCW 10.77.086(4), then the professional person in charge of the
34 treatment facility or his or her professional designee or the
35 designated mental health professional may directly file a petition for
36 one hundred eighty day treatment under RCW 71.05.280(3), or if the
37 person has been determined to be incompetent pursuant to RCW

1 10.77.088(1), a petition for ninety days of treatment may be filed
2 under RCW 71.05.230. No petition for initial detention or fourteen day
3 detention is required before such a petition may be filed.

4 NEW SECTION. Sec. 7. The legislature does not intend to increase
5 or decrease the prevailing waiting times for forensic services as a
6 result of this act. Rather, to the extent practicable, the intention
7 for the 2011-2013 biennium is to capture any reduction in state
8 hospital admissions or other efficiencies created in the form of
9 reductions at the state hospitals and cost savings to the state. To
10 the extent practicable, staffing should be provided for competency
11 evaluations so that any increase in the number of evaluations performed
12 in a jail or secure detention facility during the 2011-2013 biennium
13 resulting from this act compared to the number of evaluations performed
14 at a state hospital does not result in an increase in the number of
15 jail days consumed by defendants waiting for competency evaluations,
16 relative to the baseline established during the 2009-2011 biennium.

17 NEW SECTION. Sec. 8. RCW 71.05.235 (Examination, evaluation of
18 criminal defendant--Hearing) and 2008 c 213 s 5, 2005 c 504 s 708, 2000
19 c 74 s 6, 1999 c 11 s 1, & 1998 c 297 s 18 are each repealed.

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