

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6492

62nd Legislature
2012 Regular Session

Passed by the Senate March 8, 2012
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 8, 2012
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6492** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6492

AS AMENDED BY THE HOUSE

Passed Legislature - 2012 Regular Session

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; adding a new section to chapter 70.48 RCW; creating new
6 sections; providing an effective date; and 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 proceed or stand trial for adult
4 criminal defendants. The legislature recognizes that these targets may
5 not be achievable in all cases without compromise to quality of
6 evaluation services, but intends for the department to manage,
7 allocate, and request appropriations for resources in order to meet
8 these targets whenever possible without sacrificing the accuracy of
9 competency evaluations, and to otherwise make sustainable improvements
10 and track 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 that 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 to the executive and the legislature the extent
35 of this deviation and describe any corrective action being taken to
36 improve performance. This report must 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 to the legislature and the executive on the timeliness of
3 services related to competency to proceed or stand trial and the
4 timeliness with which court referrals accompanied by charging
5 documents, discovery, and criminal history information are provided to
6 the department relative to the signature date of the court order. The
7 report must be in a form that is accessible to the public and that
8 breaks down performance by county.

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: (i) The
12 defendant is charged with murder in the first or second degree; (ii)
13 the court finds that it is more likely than not that an evaluation in
14 the jail will be inadequate to complete an accurate evaluation; or
15 (iii) the court finds that an evaluation outside the jail setting is
16 necessary for the health, safety, or welfare of the defendant. The
17 court shall not order an initial inpatient evaluation for any purpose
18 other than a competency evaluation. ((If the defendant is being held
19 in jail or other detention facility, upon agreement of the parties, the
20 court may direct that the examination be conducted at the jail or other
21 detention facility.

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

32 (f) When a defendant is ordered to be committed for inpatient
33 ((examination)) evaluation under this subsection (1), the court may
34 delay granting bail until the defendant has been evaluated for
35 competency or sanity and appears before the court. Following the
36 evaluation, in determining bail the court shall consider: (i)
37 Recommendations of the ((expert or professional persons)) evaluator
38 regarding the defendant's competency, sanity, or diminished capacity;

1 (ii) whether the defendant has a recent history of one or more violent
2 acts; (iii) whether the defendant has previously been acquitted by
3 reason of insanity or found incompetent; (iv) whether it is reasonably
4 likely the defendant will fail to appear for a future court hearing;
5 and (v) whether the defendant is a threat to public safety.

6 (2) The court may direct that a qualified expert or professional
7 person retained by or appointed for the defendant be permitted to
8 witness the (~~examination~~) evaluation authorized by subsection (1) of
9 this section, and that the defendant shall have access to all
10 information obtained by the court appointed experts or professional
11 persons. The defendant's expert or professional person shall have the
12 right to file his or her own report following the guidelines of
13 subsection (3) 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 (3) The report of the (~~examination~~) evaluation shall include the
17 following:

18 (a) A description of the nature of the (~~examination~~) evaluation;

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

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

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

36 (e) When directed by the court, if an evaluation and report by an
37 expert or professional person has been provided concluding that the
38 defendant lacked the capacity at the time of the offense to form the

1 mental state necessary to commit the charged offense, an opinion as to
2 the capacity of the defendant to have a particular state of mind which
3 is an element of the offense charged;

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

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

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

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

23 (ii) A copy of the report and recommendation shall be provided to
24 the designated mental health professional, the prosecuting attorney,
25 the defense attorney, and the professional person at the local
26 correctional facility where the defendant is being held, or if there is
27 no professional person, to the person designated under (a)((+ii)) (iv)
28 of this subsection. Upon request, the ((facility)) evaluator shall
29 also provide copies of any source documents relevant to the evaluation
30 to 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)) (iii) Any facility providing inpatient services related to
35 competency shall discharge the defendant as soon as the facility
36 determines that the defendant is competent to stand trial. Discharge
37 shall not be postponed during the writing and distribution of the

1 evaluation report. Distribution of an evaluation report by a facility
2 providing inpatient services shall ordinarily be accomplished within
3 two working days or less following the final evaluation of the
4 defendant. If the defendant is discharged to the custody of a local
5 correctional facility, the local correctional facility must continue
6 the medication regimen prescribed by the facility, when clinically
7 appropriate, unless the defendant refuses to cooperate with medication.

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

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

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

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

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

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

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

12 (1)(a) If at any time during the pendency of an action and prior to
13 judgment the court finds, following a report as provided in RCW
14 10.77.060, a defendant is incompetent, the court shall order the
15 proceedings against the defendant be stayed except as provided in
16 subsection (4) of this section.

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

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

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

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

36 ~~(C) The program shall provide an environment affording security~~

1 appropriate with the charged criminal behavior and necessary to protect
2 the public safety.

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

7 ~~(iii) The department may establish admission priorities in the
8 event that the number of eligible persons exceeds the limits set by the
9 department.~~

10 (e)) At the end of the mental health treatment and restoration
11 period, if any, or at any time a professional person determines
12 competency has been, or is unlikely to be, restored, the defendant
13 shall be returned to court for a hearing. The parties may agree to
14 waive the defendant's presence or to remote participation by the
15 defendant at a hearing or presentation of an agreed order if the
16 recommendation of the evaluator is for the continuation of the stay of
17 criminal proceedings, or if the opinion of the evaluator is that the
18 defendant remains incompetent and there is no remaining restoration
19 period, and the hearing is held prior to expiration of the defendant's
20 authorized period of commitment, in which case the department shall
21 promptly notify the court and parties of the date of the defendant's
22 admission and expiration of commitment so that a timely hearing date
23 may be scheduled. If, after notice and hearing, competency has been
24 restored, the stay entered under (a) of this subsection shall be
25 lifted. If competency has not been restored, the proceedings shall be
26 dismissed without prejudice. If the court concludes that competency
27 has not been restored, but that further treatment within the time
28 limits established by RCW 10.77.086 or 10.77.088 is likely to restore
29 competency, the court may order that treatment for purposes of
30 competency restoration be continued. Such treatment may not extend
31 beyond the combination of time provided for in RCW 10.77.086 or
32 10.77.088.

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

37 (2) If the defendant is referred ~~((to the))~~ for evaluation by a
38 designated mental health professional ~~((for consideration of initial~~

1 ~~detention proceedings under chapter 71.05 RCW pursuant to~~) under this
2 chapter, the designated mental health professional shall provide prompt
3 written notification of the results of the ~~((determination whether to~~
4 ~~commence initial detention proceedings under chapter 71.05 RCW))~~
5 evaluation and whether the person was detained. The notification shall
6 be provided to the court in which the criminal action was pending, the
7 prosecutor, the defense attorney in the criminal action, and the
8 facility that evaluated the defendant for competency.

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

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

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

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

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

36 ~~((a))~~ (i) Shall commit the defendant to the custody of the

1 secretary who shall place such defendant in an appropriate facility of
2 the department for evaluation and treatment; or

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

6 (b) For a defendant whose highest charge is a class C felony, or a
7 class B felony that is not classified as violent under RCW 9.94A.030,
8 the maximum time allowed for the initial period of commitment for
9 competency restoration is forty-five days.

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

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

28 (4) For persons charged with a felony, at the hearing upon the
29 expiration of the second ~~((ninety-day))~~ restoration period or at the
30 end of the first ~~((ninety-day))~~ restoration period, in the case of a
31 defendant with a developmental disability, if the jury or court finds
32 that the defendant is incompetent, the charges shall be dismissed
33 without prejudice, and ~~((either civil commitment proceedings shall be~~
34 ~~instituted or))~~ the court shall either order the release of the
35 defendant or order the defendant be committed to a hospital or secure
36 mental health facility for up to seventy-two hours starting from
37 admission to the facility, excluding Saturdays, Sundays, and holidays,
38 for evaluation for the purpose of filing a civil commitment petition.

1 The criminal charges shall not be dismissed if the court or jury finds
2 that: (a) The defendant (i) is a substantial danger to other persons;
3 or (ii) presents a substantial likelihood of committing criminal acts
4 jeopardizing public safety or security; and (b) there is a substantial
5 probability that the defendant will regain competency within a
6 reasonable period of time. In the event that the court or jury makes
7 such a finding, the court may extend the period of commitment for up to
8 an additional six months.

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

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

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

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

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 9.** The joint legislative audit and review
31 committee shall make an independent assessment of the performance of
32 the state hospitals with respect to provisions specified in section 2
33 of this act, but shall not be required to independently evaluate the
34 exercise of clinical judgment. A report shall be made to the
35 legislature reflecting the committee's findings and recommendations
36 both six and eighteen months following the effective date of this

1 section. The department of social and health services shall cooperate
2 in a timely manner with requests for data and assistance related to
3 this assessment.

4 NEW SECTION. **Sec. 10.** The Washington state institute for public
5 policy shall study and report to the legislature the benefit of
6 standardizing protocols used for treatment to restore competency to
7 stand trial in Washington and during what clinically appropriate time
8 period said treatment may be expected to be effective. The department
9 of social and health services shall cooperate in a timely manner with
10 data requests in service of this study.

11 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.48 RCW
12 to read as follows:

13 A jail may not refuse to book a patient of a state hospital solely
14 based on the patient's status as a state hospital patient, but may
15 consider other relevant factors that apply to the individual
16 circumstances in each case.

17 NEW SECTION. **Sec. 12.** A new section is added to chapter 10.77 RCW
18 to read as follows:

19 (1) A state hospital may administer antipsychotic medication
20 without consent to an individual who is committed under this chapter as
21 criminally insane by following the same procedures applicable to the
22 administration of antipsychotic medication without consent to a civilly
23 committed patient under RCW 71.05.217, except for the following:

24 (a) The maximum period during which the court may authorize the
25 administration of medication without consent under a single involuntary
26 medication petition shall be the time remaining on the individual's
27 current order of commitment or one hundred eighty days, whichever is
28 shorter; and

29 (b) A petition for involuntary medication may be filed in either
30 the superior court of the county that ordered the commitment or the
31 superior court of the county in which the individual is receiving
32 treatment, provided that a copy of any order that is entered must be
33 provided to the superior court of the county that ordered the
34 commitment following the hearing. The superior court of the county of

1 commitment shall retain exclusive jurisdiction over all hearings
2 concerning the release of the patient.

3 (2) The state has a compelling interest in providing antipsychotic
4 medication to a patient who has been committed as criminally insane
5 when refusal of antipsychotic medication would result in a likelihood
6 of serious harm or substantial deterioration or substantially prolong
7 the length of involuntary commitment and there is no less intrusive
8 course of treatment than medication that is in the best interest of the
9 patient.

10 NEW SECTION. **Sec. 13.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and takes effect
17 May 1, 2012.

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