

**2SHB 2060** - H AMD 127

By Representative Jinkins

**ADOPTED 03/04/2015**

1 On page 6, beginning on line 1, strike all of sections 3 through  
2 5 and insert the following:

3  
4 "NEW SECTION. **Sec. 3.** (1) The legislature finds that there are  
5 currently no alternatives to competency restoration provided in the  
6 state hospitals and there is insufficient capacity within the state  
7 hospitals to meet the projected service needs of the state. Subject  
8 to the availability of amounts appropriated for this specific  
9 purpose, the legislature encourages the department of social and  
10 health services to develop, on a phased-in basis, alternative  
11 locations and increased access to competency restoration services  
12 under chapter 10.77 RCW for individuals who do not require inpatient  
13 psychiatric hospitalization level services.

14 (2) The department shall work with counties and the courts to  
15 develop a screening process to determine which individuals are safe to  
16 receive competency restoration treatment outside the state hospitals.  
17 The department also must develop a plan to sufficiently increase  
18 capacity to meet the projected ten-year need for both forensic and  
19 civil mental health bed demand.

20  
21 **Sec. 4.** RCW 10.77.086 and 2013 c 289 s 2 are each amended to  
22 read as follows:

23 (1)(a) If the defendant is charged with a felony and determined  
24 to be incompetent, until he or she has regained the competency  
25 necessary to understand the proceedings against him or her and  
26 assist in his or her own defense, (~~or has been determined unlikely~~  
27

1 ~~to regain competency pursuant to RCW 10.77.084(1)(b),)~~) but in any  
2 event for a period of no longer than ninety days, the court:

3 (i) Shall commit the defendant to the custody of the secretary  
4 who shall place such defendant in an appropriate facility of the  
5 department for evaluation and treatment; or

6 (ii) May alternatively order the defendant to undergo evaluation  
7 and treatment at some other facility as determined by the  
8 department, or under the guidance and control of a professional  
9 person. The facilities may include community mental health providers  
10 or other local facilities that contract with the department and are  
11 willing and able to provide treatment under this section. During the  
12 2015-2017 fiscal biennium, the department may contract with one or  
13 more cities or counties to provide competency restoration services  
14 in a city or county jail if the city or county jail is willing and  
15 able to serve as a location for competency restoration services and  
16 if the secretary determines that there is an emergent need for beds  
17 and documents the justification, including a plan to address the  
18 emergency. Patients receiving competency restoration services in a  
19 city or county jail must be physically separated from other  
20 populations at the jail, must interact only with treatment staff and  
21 not jail staff, except for incidental interaction with jail staff  
22 for custodial service, food service, or similar services, and must  
23 be provided as much as possible with a therapeutic environment.  
24 Competency restoration services provided in a city or county jail  
25 must be performed by staff and professionals who have the skills and  
26 qualifications necessary to provide competency restoration services  
27 comparable to those provided at a state hospital.

28 The ninety-day period for evaluation and treatment under this  
29 subsection (1) includes only the time the defendant is actually at  
30 the facility and is in addition to reasonable time for transport to  
31 or from the facility.

32 (b) For a defendant whose highest charge is a class C felony, or  
33 a class B felony that is not classified as violent under RCW  
34 9.94A.030, the maximum time allowed for the initial period of

1 commitment for competency restoration is forty-five days. The forty-  
2 five day period includes only the time the defendant is actually at  
3 the facility and is in addition to reasonable time for transport to  
4 or from the facility.

5 (c) If the court determines that the defendant is unlikely to  
6 regain competency, the court may dismiss the charges without  
7 prejudice without ordering the defendant to undergo restoration  
8 treatment, in which case the court shall order that the defendant be  
9 referred for evaluation for civil commitment in the manner provided  
10 in subsection (4) of this section.

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

15 (3) If the court finds by a preponderance of the evidence that a  
16 defendant charged with a felony is incompetent, the court shall have  
17 the option of extending the order of commitment or alternative  
18 treatment for an additional period of ninety days, but the court  
19 must at the time of extension set a date for a prompt hearing to  
20 determine the defendant's competency before the expiration of the  
21 second restoration period. The defendant, the defendant's attorney,  
22 or the prosecutor has the right to demand that the hearing be before  
23 a jury. No extension shall be ordered for a second or third  
24 restoration period as provided in subsection (4) of this section if  
25 the defendant's incompetence has been determined by the secretary to  
26 be solely the result of a developmental disability which is such  
27 that competence is not reasonably likely to be regained during an  
28 extension. The ninety-day period includes only the time the  
29 defendant is actually at the facility and is in addition to  
30 reasonable time for transport to or from the facility.

31 (4) For persons charged with a felony, at the hearing upon the  
32 expiration of the second restoration period, or at the end of the  
33 first restoration period((7)) in the case of a defendant with a  
34 developmental disability, if the jury or court finds that the

1 defendant is incompetent, or if the court or jury at any stage finds  
2 that the defendant is incompetent and the court determines that the  
3 defendant is unlikely to regain competency, the charges shall be  
4 dismissed without prejudice, and the court shall order the defendant  
5 be committed to a state hospital as defined in RCW 72.23.010 for up  
6 to seventy-two hours starting from admission to the facility,  
7 excluding Saturdays, Sundays, and holidays, for evaluation for the  
8 purpose of filing a civil commitment petition under chapter 71.05  
9 RCW. The criminal charges shall not be dismissed if the court or  
10 jury finds that: (a) The defendant (i) is a substantial danger to  
11 other persons; or (ii) presents a substantial likelihood of  
12 committing criminal acts jeopardizing public safety or security; and  
13 (b) there is a substantial probability that the defendant will  
14 regain competency within a reasonable period of time. In the event  
15 that the court or jury makes such a finding, the court may extend  
16 the period of commitment for up to an additional six months. The  
17 six-month period includes only the time the defendant is actually at  
18 the facility and is in addition to reasonable time for transport to  
19 or from the facility.

20

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

23 (1)(a) If the defendant is charged with a nonfelony crime which  
24 is a serious offense as identified in RCW 10.77.092 and found by the  
25 court to be not competent, then the court (~~shall order the~~  
26 ~~secretary to place the defendant~~):

27 (i) (~~At a secure mental health facility in the custody of the~~  
28 ~~department or an agency designated by the department for mental~~  
29 ~~health treatment and restoration of competency.~~) Shall commit the  
30 defendant to the custody of the secretary who shall place such  
31 defendant in an appropriate facility of the department for  
32 evaluation and treatment;

33 (ii) May alternatively order the defendant to undergo evaluation  
34 and treatment at some other facility as determined by the

1 department, or under the guidance and control of a professional  
2 person. The facilities may include community mental health providers  
3 or other local facilities that contract with the department and are  
4 willing and able to provide treatment under this section. During the  
5 2015-2017 fiscal biennium, the department may contract with one or  
6 more cities or counties to provide competency restoration services  
7 in a city or county jail if the city or county jail is willing and  
8 able to serve as a location for competency restoration services and  
9 if the secretary determines that there is an emergent need for beds  
10 and documents the justification, including a plan to address the  
11 emergency. Patients receiving competency restoration services in a  
12 city or county jail must be physically separated from other  
13 populations at the jail, must interact only with treatment staff and  
14 not jail staff, except for incidental interaction with jail staff  
15 for custodial service, food service, or similar services, and must  
16 be provided as much as possible with a therapeutic environment.  
17 Competency restoration services provided in a city or county jail  
18 must be performed by staff and professionals who have the skills and  
19 qualifications necessary to provide competency restoration services  
20 comparable to those provided at a state hospital.

21 The placement under (a)(i) and (ii) of this subsection shall not  
22 exceed fourteen days in addition to any unused time of the  
23 evaluation under RCW 10.77.060. The court shall compute this total  
24 period and include its computation in the order. The fourteen-day  
25 period plus any unused time of the evaluation under RCW 10.77.060  
26 shall be considered to include only the time the defendant is  
27 actually at the facility and shall be in addition to reasonable time  
28 for transport to or from the facility;

29 ~~((+iii))~~ (iii) May alternatively order that the defendant be  
30 placed on conditional release for up to ninety days for mental  
31 health treatment and restoration of competency; or

32 ~~((+iii))~~ (iv) May order any combination of this subsection.

33 (b) If the court has determined that the defendant is unlikely  
34 to regain competency, the court may dismiss the charges without

1 prejudice without ordering the defendant to undergo restoration  
2 treatment, in which case the court shall order that the defendant be  
3 referred for evaluation for civil commitment in the manner provided  
4 in (c) of this subsection.

5 (c)(i) If the proceedings are dismissed under RCW 10.77.084 and  
6 the defendant was on conditional release at the time of dismissal,  
7 the court shall order the designated mental health professional  
8 within that county to evaluate the defendant pursuant to chapter  
9 71.05 RCW. The evaluation may be conducted in any location chosen by  
10 the professional.

11 (ii) If the defendant was in custody and not on conditional  
12 release at the time of dismissal, the defendant shall be detained  
13 and sent to an evaluation and treatment facility for up to seventy-  
14 two hours, excluding Saturdays, Sundays, and holidays, for  
15 evaluation for purposes of filing a petition under chapter 71.05  
16 RCW. The seventy-two-hour period shall commence upon the next  
17 nonholiday weekday following the court order and shall run to the  
18 end of the last nonholiday weekday within the seventy-two-hour  
19 period.

20 (2) If the defendant is charged with a nonfelony crime that is  
21 not a serious offense as defined in RCW 10.77.092:  
22 The court may stay or dismiss proceedings and detain the defendant for  
23 sufficient time to allow the designated mental health professional to  
24 evaluate the defendant and consider initial detention proceedings  
25 under chapter 71.05 RCW. The court must give notice to all parties at  
26 least twenty-four hours before the dismissal of any proceeding under  
27 this subsection, and provide an opportunity for a hearing on whether  
28 to dismiss the proceedings."

29

EFFECT: • Adds an additional legislative finding that there is insufficient capacity within the state hospitals to meet the projected service needs of the state.

• Requires the Department to work with counties and the courts to develop a screening process to determine which individuals are safe

to receive competency restoration treatment outside the state hospitals and to develop a plan to sufficiently increase capacity to meet the projected ten-year need for both forensic and civil mental health bed demand.

- Provides that competency restoration services provided in a city or county jail must be performed by staff and professionals who have the skills and qualifications necessary to provide competency restoration services comparable to those provided at a state hospital.
- Alters the requirement that patients receiving restoration treatment in a jail must interact only with treatment staff and not jail staff to allow incidental interaction with jail staff for custodial service, food service, or similar services.
- Makes clear that the 14-day restoration treatment period for a defendant charged with a misdemeanor offense applies for restoration treatment at a state hospital or at an alternative location in the community or a jail.
- Makes changes for language clarity and consistency.

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