

E2SSB 5177 - H COMM AMD
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the
2 following:

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

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

19 **Sec. 2.** RCW 10.77.084 and 2012 c 256 s 5 are each amended to
20 read as follows:

21 (1)(a) If at any time during the pendency of an action and prior
22 to judgment the court finds, following a report as provided in RCW
23 10.77.060, a defendant is incompetent to stand trial, the court shall
24 order the proceedings against the defendant be stayed except as
25 provided in subsection (4) of this section.

26 (b) The court may order a defendant who has been found to be
27 incompetent to stand trial to undergo competency restoration
28 treatment at a facility designated by the department if the defendant
29 is eligible under RCW 10.77.086 or 10.77.088. At the end of ((the
30 ~~mental health treatment and~~)) each competency restoration period((~~7~~
31 ~~if any,~~)) or at any time a professional person determines competency
32 has been, or is unlikely to be, restored, the facility shall return
33 the defendant ((~~shall be returned~~)) to court for a hearing((~~-~~)),

1 except that if the opinion of the professional person is that the
2 defendant remains incompetent and the hearing is held before the
3 expiration of the current competency restoration period, the parties
4 may agree to waive the defendant's presence ((or)), to remote
5 participation by the defendant at a hearing, or to presentation of an
6 agreed order ((if the recommendation of the evaluator is for the
7 continuation of the stay of criminal proceedings, or if the opinion
8 of the evaluator is that the defendant remains incompetent and there
9 is no remaining restoration period, and the hearing is held prior to
10 expiration of the defendant's authorized period of commitment, in
11 which case)) in lieu of a hearing. The ((department)) facility shall
12 promptly notify the court and all parties of the date ((of the
13 defendant's admission and expiration of commitment)) on which the
14 competency restoration period commences and expires so that a timely
15 hearing date may be scheduled.

16 (c) If, ((after)) following notice and hearing((r)) or entry of
17 an agreed order under (b) of this subsection, the court finds that
18 competency has been restored, the court shall lift the stay entered
19 under (a) of this subsection ((shall be lifted)). If the court finds
20 that competency has not been restored, the court shall dismiss the
21 proceedings ((shall be dismissed)) without prejudice((. If the court
22 concludes that competency has not been restored, but)), except that
23 the court may order a further period of competency restoration
24 treatment if it finds that further treatment within the time limits
25 established by RCW 10.77.086 or 10.77.088 is likely to restore
26 competency, ((the court may order that treatment for purposes of
27 competency restoration be continued. Such treatment may not extend
28 beyond the combination of time provided for in)) and a further period
29 of treatment is allowed under RCW 10.77.086 or 10.77.088.

30 ((e)) (d) If at any time during the proceeding the court finds,
31 following notice and hearing, a defendant is not likely to regain
32 competency, the court shall dismiss the proceedings ((shall be
33 dismissed)) without prejudice and refer the defendant ((shall be
34 evaluated)) for civil commitment evaluation or proceedings if
35 appropriate under RCW 10.77.065, 10.77.086, or 10.77.088.

36 (2) If the defendant is referred for evaluation by a designated
37 mental health professional under this chapter, the designated mental
38 health professional shall provide prompt written notification of the
39 results of the evaluation and whether the person was detained. The
40 notification shall be provided to the court in which the criminal

1 action was pending, the prosecutor, the defense attorney in the
2 criminal action, and the facility that evaluated the defendant for
3 competency.

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

7 (4) A defendant receiving medication for either physical or
8 mental problems shall not be prohibited from standing trial, if the
9 medication either enables the defendant to understand the proceedings
10 against him or her and to assist in his or her own defense, or does
11 not disable him or her from so understanding and assisting in his or
12 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 evaluation 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
19 incompetence is determined to be solely due to a developmental
20 disability or the evaluator concludes that the defendant is not
21 likely to regain competency must include an assessment of the
22 defendant's future dangerousness which is evidence-based regarding
23 predictive validity.

24 **Sec. 3.** RCW 10.77.086 and 2013 c 289 s 2 are each amended to
25 read as follows:

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

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

35 ((+ii)) (B) May alternatively order the defendant to undergo
36 evaluation and treatment at some other facility as determined by the
37 department, or under the guidance and control of a professional
38 person. The facilities may include community mental health providers
39 or other local facilities that contract with the department and are

1 willing and able to provide treatment under this section. During the
2 2015-2017 fiscal biennium, the department may contract with one or
3 more cities or counties to provide competency restoration services in
4 a city or county jail if the city or county jail is willing and able
5 to serve as a location for competency restoration services and if the
6 secretary determines that there is an emergent need for beds and
7 documents the justification, including a plan to address the
8 emergency. Patients receiving competency restoration services in a
9 city or county jail must be physically separated from other
10 populations at the jail, the model of restoration treatment services
11 must be substantially equivalent to that provided at the state
12 hospitals, and restoration treatment services must be provided as
13 much as possible within a therapeutic environment and performed by
14 staff and professionals who have the skills and qualifications
15 necessary to provide restoration treatment services comparable to
16 those provided at a state hospital.

17 (ii) The ninety day period for evaluation and treatment under
18 this subsection (1) includes only the time the defendant is actually
19 at the facility and is in addition to reasonable time for transport
20 to or from the facility.

21 (b) For a defendant whose highest charge is a class C felony, or
22 a class B felony that is not classified as violent under RCW
23 9.94A.030, the maximum time allowed for the initial period of
24 commitment for competency restoration is forty-five days. The forty-
25 five day period includes only the time the defendant is actually at
26 the facility and is in addition to reasonable time for transport to
27 or from the facility.

28 (c) If the court determines that the defendant is unlikely to
29 regain competency, the court may dismiss the charges without
30 prejudice without ordering the defendant to undergo restoration
31 treatment, in which case the court shall order that the defendant be
32 referred for evaluation for civil commitment in the manner provided
33 in subsection (4) of this section.

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

38 (3) If the court finds by a preponderance of the evidence that a
39 defendant charged with a felony is incompetent, the court shall have
40 the option of extending the order of commitment or alternative

1 treatment for an additional period of ninety days, but the court must
2 at the time of extension set a date for a prompt hearing to determine
3 the defendant's competency before the expiration of the second
4 restoration period. The defendant, the defendant's attorney, or the
5 prosecutor has the right to demand that the hearing be before a jury.
6 No extension shall be ordered for a second or third restoration
7 period as provided in subsection (4) of this section if the
8 defendant's incompetence has been determined by the secretary to be
9 solely the result of a developmental disability which is such that
10 competence is not reasonably likely to be regained during an
11 extension. The ninety-day period includes only the time the defendant
12 is actually at the facility and is in addition to reasonable time for
13 transport to or from the facility.

14 (4) For persons charged with a felony, at the hearing upon the
15 expiration of the second restoration period, or at the end of the
16 first restoration period((7)) in the case of a defendant with a
17 developmental disability, if the jury or court finds that the
18 defendant is incompetent, or if the court or jury at any stage finds
19 that the defendant is incompetent and the court determines that the
20 defendant is unlikely to regain competency, the charges shall be
21 dismissed without prejudice, and the court shall order the defendant
22 be committed to a state hospital as defined in RCW 72.23.010 for up
23 to seventy-two hours starting from admission to the facility,
24 excluding Saturdays, Sundays, and holidays, for evaluation for the
25 purpose of filing a civil commitment petition under chapter 71.05
26 RCW. The criminal charges shall not be dismissed if the court or jury
27 finds that: (a) The defendant (i) is a substantial danger to other
28 persons; or (ii) presents a substantial likelihood of committing
29 criminal acts jeopardizing public safety or security; and (b) there
30 is a substantial probability that the defendant will regain
31 competency within a reasonable period of time. In the event that the
32 court or jury makes such a finding, the court may extend the period
33 of commitment for up to an additional six months. The six-month
34 period includes only the time the defendant is actually at the
35 facility and is in addition to reasonable time for transport to or
36 from the facility.

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

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

5 (i) (~~At a secure mental health facility in the custody of the~~
6 ~~department or an agency designated by the department for mental~~
7 ~~health treatment and restoration of competency.~~) Shall commit the
8 defendant to the custody of the secretary who shall place such
9 defendant in an appropriate facility of the department for evaluation
10 and treatment;

11 (ii) May alternatively order the defendant to undergo evaluation
12 and treatment at some other facility as determined by the department,
13 or under the guidance and control of a professional person. The
14 facilities may include community mental health providers or other
15 local facilities that contract with the department and are willing
16 and able to provide treatment under this section. During the
17 2015-2017 fiscal biennium, the department may contract with one or
18 more cities or counties to provide competency restoration services in
19 a city or county jail if the city or county jail is willing and able
20 to serve as a location for competency restoration services and if the
21 secretary determines that there is an emergent need for beds and
22 documents the justification, including a plan to address the
23 emergency. Patients receiving competency restoration services in a
24 city or county jail must be physically separated from other
25 populations at the jail, the model of restoration treatment services
26 must be substantially equivalent to that provided at the state
27 hospitals, and restoration treatment services must be provided as
28 much as possible within a therapeutic environment and performed by
29 staff and professionals who have the skills and qualifications
30 necessary to provide restoration treatment services comparable to
31 those provided at a state hospital. The placement under (a)(i) and
32 (ii) of this subsection shall not exceed fourteen days in addition to
33 any unused time of the evaluation under RCW 10.77.060. The court
34 shall compute this total period and include its computation in the
35 order. The fourteen-day period plus any unused time of the evaluation
36 under RCW 10.77.060 shall be considered to include only the time the
37 defendant is actually at the facility and shall be in addition to
38 reasonable time for transport to or from the facility;

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

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

5 (b) If the court has determined 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 (c) of this subsection.

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

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

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

27 The court may stay or dismiss proceedings and detain the
28 defendant for sufficient time to allow the designated mental health
29 professional to evaluate the defendant and consider initial detention
30 proceedings under chapter 71.05 RCW. The court must give notice to
31 all parties at least twenty-four hours before the dismissal of any
32 proceeding under this subsection, and provide an opportunity for a
33 hearing on whether to dismiss the proceedings.

34 **Sec. 5.** RCW 10.77.073 and 2013 c 284 s 1 are each amended to
35 read as follows:

36 (1) The department shall reimburse a county for the cost of
37 appointing a qualified expert or professional person under RCW
38 10.77.060(1)(a) subject to subsections (2) through (4) of this
39 section if, at the time of a referral for an evaluation of competency

1 to stand trial in a jail for an in-custody defendant, the department
2 (~~has not met~~): (a) During the most recent quarter, did not perform
3 at least one-third of the number of jail-based competency evaluations
4 for in-custody defendants as were performed by qualified experts or
5 professional persons appointed by the court in the referring county;
6 or (b) did not meet the performance target for timely completion of
7 competency evaluations under RCW 10.77.068(1)(a)(~~(ii)~~) (iii) during
8 the most recent quarter in fifty percent of cases submitted by the
9 referring county, as documented in the most recent quarterly report
10 under RCW 10.77.068(3) or confirmed by records maintained by the
11 department(~~, the department shall reimburse the county for the cost~~
12 ~~of appointing a qualified expert or professional person under RCW~~
13 ~~10.77.060(1)(a) subject to subsections (2) and (3) of this section~~)).

14 (2) Appointment of a qualified expert or professional person
15 under this section must be from a list of qualified experts or
16 professional persons assembled with participation by representatives
17 of the prosecuting attorney and the defense bar of the county. The
18 qualified expert or professional person shall complete an evaluation
19 and report that includes the components specified in RCW
20 10.77.060(3).

21 (3) The county shall provide a copy of the evaluation report to
22 the applicable state hospital upon referral of the defendant for
23 admission to the state hospital. The county shall:

24 (a) In consultation with the department, develop and maintain
25 critical data elements, including data on the timeliness of
26 competency evaluations completed under this section; and

27 (b) Share this data with the department upon the department's
28 request.

29 (4) A qualified expert or professional person appointed by a
30 court under this section must be compensated for competency
31 evaluations in an amount that will encourage in-depth evaluation
32 reports. Subject to the availability of amounts appropriated for this
33 specific purpose, the department shall reimburse the county in an
34 amount determined by the department to be fair and reasonable with
35 the county paying any excess costs. The amount of reimbursement
36 established by the department must at least meet the equivalent
37 amount for evaluations conducted by the department.

38 (~~(4)-(5)~~) (5) Nothing in this section precludes either party
39 from objecting to the appointment of an evaluator on the basis that
40 an inpatient evaluation is appropriate under RCW 10.77.060(1)(d).

1 (~~(5)~~[(~~6~~)]) (6) This section expires June 30, (~~(2016)~~) 2018.

2 **Sec. 6.** RCW 10.77.091 and 2010 c 263 s 2 are each amended to
3 read as follows:

4 (1) If the secretary determines in writing that a person
5 committed to the custody of the secretary for treatment as criminally
6 insane presents an unreasonable safety risk which, based on behavior,
7 clinical history, and facility security is not manageable in a state
8 hospital setting, and the secretary has given consideration to
9 reasonable alternatives that would be effective to manage the
10 behavior, the secretary may place the person in any secure facility
11 operated by the secretary or the secretary of the department of
12 corrections. The secretary's written decision and reasoning must be
13 documented in the patient's medical file. Any person affected by this
14 provision shall receive appropriate mental health treatment governed
15 by a formalized treatment plan targeted at mental health
16 rehabilitation needs and shall be afforded his or her rights under
17 RCW 10.77.140, 10.77.150, and 10.77.200. The secretary of the
18 department of social and health services shall retain legal custody
19 of any person placed under this section and review any placement
20 outside of a department mental health hospital every three months, or
21 sooner if warranted by the person's mental health status, to
22 determine if the placement remains appropriate.

23 (2) Beginning December 1, 2010, and every six months thereafter,
24 the secretary shall report to the governor and the appropriate
25 committees of the legislature regarding the use of the authority
26 under this section to transfer persons to a secure facility. The
27 report shall include information related to the number of persons who
28 have been placed in a secure facility operated by the secretary or
29 the secretary of the department of corrections, and the length of
30 time that each such person has been in the secure facility.

31 (~~(3) This section expires June 30, 2015.~~)

32 **Sec. 7.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to
33 read as follows:

34 No person who is criminally insane confined pursuant to this
35 chapter shall be incarcerated in a state correctional institution or
36 facility(~~(: PROVIDED, That nothing herein shall prohibit)~~). This
37 section does not apply to confinement in a mental health facility
38 located wholly within a correctional institution. Confinement of a

1 person who is criminally insane in a county jail or other local
2 facility while awaiting either placement in a treatment program or a
3 court hearing pursuant to this chapter is permitted for no more than
4 seven days.

5 NEW SECTION. Sec. 8. A new section is added to chapter 10.77
6 RCW to read as follows:

7 (1) If the defendant is charged with a nonfelony offense, and the
8 issue of competency to stand trial is raised by the court or a party
9 under RCW 10.77.060, the prosecutor may continue with the competency
10 process or dismiss the charges without prejudice and refer the
11 defendant for assessment by a mental health professional, chemical
12 dependency professional, or developmental disabilities professional
13 to determine the appropriate service needs for the defendant.

14 (2) This section does not apply to defendants with a current
15 charge or prior conviction for a serious violent offense or sex
16 offense as defined in RCW 9.94A.030.

17 NEW SECTION. Sec. 9. A new section is added to chapter 10.77
18 RCW to read as follows:

19 (1) In order to prioritize goals of accuracy, prompt service to
20 the court, quality assurance, and integration with other services, an
21 office of forensic mental health services is established within the
22 department of social and health services. The office shall be led by
23 a director on at least the level of deputy assistant secretary within
24 the department who shall, after a reasonable period of transition,
25 have responsibility for the following functions:

26 (a) Operational control of all forensic evaluation services,
27 including specific budget allocation;

28 (b) Responsibility for training forensic evaluators;

29 (c) Development of a system to certify forensic evaluators, and
30 to monitor the quality of forensic evaluation reports;

31 (d) Liaison with courts, jails, and community mental health
32 programs to ensure proper flow of information, coordinate logistical
33 issues, and solve problems in complex circumstances;

34 (e) Coordination with state hospitals to identify and develop
35 best practice interventions and curricula for services that are
36 unique to forensic patients;

1 (f) Promotion of congruence across state hospitals where
2 appropriate, and promotion of interventions that flow smoothly into
3 community interventions;

4 (g) Coordination with regional support networks, behavioral
5 health organizations, community mental health agencies, and the
6 department of corrections regarding community treatment and
7 monitoring of persons on conditional release;

8 (h) Oversight of forensic data collection and analysis statewide,
9 and appropriate dissemination of data trends and recommendations; and

10 (i) Oversight of the development, implementation, and maintenance
11 of community forensic programs and services.

12 (2) The office of forensic mental health services must have a
13 clearly delineated budget separate from the overall budget for state
14 hospital services.

15 **Sec. 10.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to
16 read as follows:

17 (1) If an individual is referred to a designated mental health
18 professional under RCW 10.77.088(1)((~~b~~)) (c)(i), the designated
19 mental health professional shall examine the individual within forty-
20 eight hours. If the designated mental health professional determines
21 it is not appropriate to detain the individual or petition for a
22 ninety-day less restrictive alternative under RCW 71.05.230(4), that
23 decision shall be immediately presented to the superior court for
24 hearing. The court shall hold a hearing to consider the decision of
25 the designated mental health professional not later than the next
26 judicial day. At the hearing the superior court shall review the
27 determination of the designated mental health professional and
28 determine whether an order should be entered requiring the person to
29 be evaluated at an evaluation and treatment facility. No person
30 referred to an evaluation and treatment facility may be held at the
31 facility longer than seventy-two hours.

32 (2) If an individual is placed in an evaluation and treatment
33 facility under RCW 10.77.088(1)((~~b~~)) (c)(ii), a professional person
34 shall evaluate the individual for purposes of determining whether to
35 file a ninety-day inpatient or outpatient petition under chapter
36 71.05 RCW. Before expiration of the seventy-two hour evaluation
37 period authorized under RCW 10.77.088(1)((~~b~~)) (c)(ii), the
38 professional person shall file a petition or, if the recommendation
39 of the professional person is to release the individual, present his

1 or her recommendation to the superior court of the county in which
2 the criminal charge was dismissed. The superior court shall review
3 the recommendation not later than forty-eight hours, excluding
4 Saturdays, Sundays, and holidays, after the recommendation is
5 presented. If the court rejects the recommendation to unconditionally
6 release the individual, the court may order the individual detained
7 at a designated evaluation and treatment facility for not more than a
8 seventy-two hour evaluation and treatment period and direct the
9 individual to appear at a surety hearing before that court within
10 seventy-two hours, or the court may release the individual but direct
11 the individual to appear at a surety hearing set before that court
12 within eleven days, at which time the prosecutor may file a petition
13 under this chapter for ninety-day inpatient or outpatient treatment.
14 If a petition is filed by the prosecutor, the court may order that
15 the person named in the petition be detained at the evaluation and
16 treatment facility that performed the evaluation under this
17 subsection or order the respondent to be in outpatient treatment. If
18 a petition is filed but the individual fails to appear in court for
19 the surety hearing, the court shall order that a mental health
20 professional or peace officer shall take such person or cause such
21 person to be taken into custody and placed in an evaluation and
22 treatment facility to be brought before the court the next judicial
23 day after detention. Upon the individual's first appearance in court
24 after a petition has been filed, proceedings under RCW 71.05.310 and
25 71.05.320 shall commence. For an individual subject to this
26 subsection, the prosecutor or professional person may directly file a
27 petition for ninety-day inpatient or outpatient treatment and no
28 petition for initial detention or fourteen-day detention is required
29 before such a petition may be filed.

30 The court shall conduct the hearing on the petition filed under
31 this subsection within five judicial days of the date the petition is
32 filed. The court may continue the hearing upon the written request of
33 the person named in the petition or the person's attorney, for good
34 cause shown, which continuance shall not exceed five additional
35 judicial days. If the person named in the petition requests a jury
36 trial, the trial shall commence within ten judicial days of the date
37 of the filing of the petition. The burden of proof shall be by clear,
38 cogent, and convincing evidence and shall be upon the petitioner. The
39 person shall be present at such proceeding, which shall in all

1 respects accord with the constitutional guarantees of due process of
2 law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

3 During the proceeding the person named in the petition shall
4 continue to be detained and treated until released by order of the
5 court. If no order has been made within thirty days after the filing
6 of the petition, not including any extensions of time requested by
7 the detained person or his or her attorney, the detained person shall
8 be released.

9 (3) If a designated mental health professional or the
10 professional person and prosecuting attorney for the county in which
11 the criminal charge was dismissed or attorney general, as
12 appropriate, stipulate that the individual does not present a
13 likelihood of serious harm or is not gravely disabled, the hearing
14 under this section is not required and the individual, if in custody,
15 shall be released.

16 (4) The individual shall have the rights specified in RCW
17 71.05.360 (8) and (9).

18 **Sec. 11.** RCW 10.77.065 and 2014 c 10 s 3 are each amended to
19 read as follows:

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

27 (ii) A copy of the report and recommendation shall be provided to
28 the designated mental health professional, the prosecuting attorney,
29 the defense attorney, and the professional person at the local
30 correctional facility where the defendant is being held, or if there
31 is no professional person, to the person designated under (a)(iv) of
32 this subsection. Upon request, the evaluator shall also provide
33 copies of any source documents relevant to the evaluation to the
34 designated mental health professional.

35 (iii) Any facility providing inpatient services related to
36 competency shall discharge the defendant as soon as the facility
37 determines that the defendant is competent to stand trial. Discharge
38 shall not be postponed during the writing and distribution of the
39 evaluation report. Distribution of an evaluation report by a facility

1 providing inpatient services shall ordinarily be accomplished within
2 two working days or less following the final evaluation of the
3 defendant. If the defendant is discharged to the custody of a local
4 correctional facility, the local correctional facility must continue
5 the medication regimen prescribed by the facility, when clinically
6 appropriate, unless the defendant refuses to cooperate with
7 medication and an involuntary medication order by the court has not
8 been entered.

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

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

19 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
20 person should be evaluated by a designated mental health professional
21 under chapter 71.05 RCW, the court shall order such evaluation be
22 conducted prior to release from confinement when the person is
23 acquitted or convicted and sentenced to confinement for twenty-four
24 months or less, or when charges are dismissed pursuant to a finding
25 of incompetent to stand trial.

26 (2) The designated mental health professional shall provide
27 written notification within twenty-four hours of the results of the
28 determination whether to commence proceedings under chapter 71.05
29 RCW. 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
32 of any proceedings commenced by the designated mental health
33 professional under subsection (2) of this section to the secretary.

34 (4) A facility conducting a civil commitment evaluation under RCW
35 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a
36 determination to release the person instead of filing a civil
37 commitment petition must provide written notice to the prosecutor and
38 defense attorney at least twenty-four hours prior to release. The
39 notice may be given by electronic mail, facsimile, or other means
40 reasonably likely to communicate the information immediately.

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

6 **Sec. 12.** RCW 10.77.065 and 2014 c 225 s 59 and 2014 c 10 s 3 are
7 each reenacted and amended to read as follows:

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

15 (ii) A copy of the report and recommendation shall be provided to
16 the designated mental health professional, the prosecuting attorney,
17 the defense attorney, and the professional person at the local
18 correctional facility where the defendant is being held, or if there
19 is no professional person, to the person designated under (a)(iv) of
20 this subsection. Upon request, the evaluator shall also provide
21 copies of any source documents relevant to the evaluation to the
22 designated mental health professional.

23 (iii) Any facility providing inpatient services related to
24 competency shall discharge the defendant as soon as the facility
25 determines that the defendant is competent to stand trial. Discharge
26 shall not be postponed during the writing and distribution of the
27 evaluation report. Distribution of an evaluation report by a facility
28 providing inpatient services shall ordinarily be accomplished within
29 two working days or less following the final evaluation of the
30 defendant. If the defendant is discharged to the custody of a local
31 correctional facility, the local correctional facility must continue
32 the medication regimen prescribed by the facility, when clinically
33 appropriate, unless the defendant refuses to cooperate with
34 medication and an involuntary medication order by the court has not
35 been entered.

36 (iv) If there is no professional person at the local correctional
37 facility, the local correctional facility shall designate a
38 professional person as defined in RCW 71.05.020 or, in cooperation
39 with the behavioral health organization, a professional person at the

1 behavioral health organization to receive the report and
2 recommendation.

3 (v) Upon commencement of a defendant's evaluation in the local
4 correctional facility, the local correctional facility must notify
5 the evaluator of the name of the professional person, or person
6 designated under (a)(iv) of this subsection, to receive the report
7 and recommendation.

8 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
9 person should be evaluated by a designated mental health professional
10 under chapter 71.05 RCW, the court shall order such evaluation be
11 conducted prior to release from confinement when the person is
12 acquitted or convicted and sentenced to confinement for twenty-four
13 months or less, or when charges are dismissed pursuant to a finding
14 of incompetent to stand trial.

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

20 (3) The prosecuting attorney shall provide a copy of the results
21 of any proceedings commenced by the designated mental health
22 professional under subsection (2) of this section to the secretary.

23 (4) A facility conducting a civil commitment evaluation under RCW
24 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a
25 determination to release the person instead of filing a civil
26 commitment petition must provide written notice to the prosecutor and
27 defense attorney at least twenty-four hours prior to release. The
28 notice may be given by electronic mail, facsimile, or other means
29 reasonably likely to communicate the information immediately.

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

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

1 NEW SECTION. **Sec. 14.** Section 11 of this act expires April 1,
2 2016.

3 NEW SECTION. **Sec. 15.** Section 12 of this act takes effect April
4 1, 2016.

5 NEW SECTION. **Sec. 16.** Section 5 of this act is necessary for
6 the immediate preservation of the public peace, health, or safety, or
7 support of the state government and its existing public institutions,
8 and takes effect immediately."

9 Correct the title.

EFFECT: (1) Extends the expiration date of a statute that provides for state reimbursement to counties for the costs of appointing independent competency evaluators for in-custody defendants from 2016 to 2018. Expands the grounds under which a county may request the reimbursement to include if the DSHS in the most recent quarter did not perform at least one-third of the number of evaluations for in-custody defendants as were performed by qualified experts appointed by the court. Requires the county to work with the DSHS to develop and maintain critical data elements relating to timeliness of evaluations and share this data with the DSHS. (Similar to SHB 1426/2SSB 5403).

(2) With respect to jail-based competency restoration treatment, removes the requirement that patients interact only with treatment staff and not jail staff, and instead requires that the model of restoration treatment must be substantially equivalent to that provided at the state hospitals and must be performed by staff and professionals with the skills and qualifications necessary to provide competency restoration services comparable to those in a state hospital.

(3) 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 DSHS 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 10-year need for both forensic and civil mental health bed demand.

(4) With respect to the authority of the DSHS to place a person who is criminally insane in a secure facility of the department of corrections, requires the secretary of the DSHS to give consideration to reasonable alternatives that would be effective to manage the person's behavior, and to include written documentation of the decision and reasoning in the patient's medical file.

(5) Clarifies the process for referring a person for evaluation under the involuntary treatment act when the court dismisses criminal

charges after finding that the person is incompetent to stand trial and is unlikely to regain competency.

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