

2SSB 5177 - S AMD 96

By Senators O'Ban, Darneille

ADOPTED 3/4/2015

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

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

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

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

18 (b) The court may order a defendant who has been found to be
19 incompetent to stand trial to undergo competency restoration
20 treatment at a facility designated by the department if the defendant
21 is eligible under RCW 10.77.086 or 10.77.088. At the end of (~~the~~
22 ~~mental health treatment and~~) each competency restoration period(~~-~~
23 ~~if any,~~) or at any time a professional person determines competency
24 has been, or is unlikely to be, restored, the facility shall return
25 the defendant (~~shall be returned~~) to court for a hearing(~~-~~),
26 except that if the opinion of the professional person is that the
27 defendant remains incompetent and the hearing is held before the
28 expiration of the current competency restoration period, the parties
29 may agree to waive the defendant's presence (~~or~~), to remote
30 participation by the defendant at a hearing, or to presentation of an
31 agreed order (~~if the recommendation of the evaluator is for the~~
32 ~~continuation of the stay of criminal proceedings, or if the opinion~~

1 ~~of the evaluator is that the defendant remains incompetent and there~~
2 ~~is no remaining restoration period, and the hearing is held prior to~~
3 ~~expiration of the defendant's authorized period of commitment, in~~
4 ~~which case)) in lieu of a hearing. The ((department)) facility shall
5 promptly notify the court and all parties of the date ((of the
6 defendant's admission and expiration of commitment)) on which the
7 competency restoration period commences and expires so that a timely
8 hearing date may be scheduled.~~

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

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

29 (2) If the defendant is referred for evaluation by a designated
30 mental health professional under this chapter, the designated mental
31 health professional shall provide prompt written notification of the
32 results of the evaluation and whether the person was detained. The
33 notification shall be provided to the court in which the criminal
34 action was pending, the prosecutor, the defense attorney in the
35 criminal action, and the facility that evaluated the defendant for
36 competency.

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

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

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

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

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

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

29 ((+ii)) (B) May alternatively order the defendant to undergo
30 evaluation and treatment at some other facility as determined by the
31 department, or under the guidance and control of a professional
32 person. The facilities may include community mental health providers
33 or other local facilities that contract with the department and are
34 willing and able to provide treatment under this section. During the
35 2015-2017 fiscal biennium, the department may contract with one or
36 more cities or counties to provide competency restoration services in
37 a city or county jail if the city or county jail is willing and able
38 to serve as a location for competency restoration services and if the
39 secretary determines that there is an emergent need for beds and

1 documents the justification, including a plan to address the
2 emergency. Patients receiving competency restoration services in a
3 city or county jail must be physically separated from other
4 populations at the jail, must interact only with treatment staff and
5 not jail staff, and must be provided as much as possible with a
6 therapeutic environment.

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

11 (b) For a defendant whose highest charge is a class C felony, or
12 a class B felony that is not classified as violent under RCW
13 9.94A.030, the maximum time allowed for the initial period of
14 commitment for competency restoration is forty-five days. The forty-
15 five day period includes only the time the defendant is actually at
16 the facility and is in addition to reasonable time for transport to
17 or from the facility.

18 (c) If the court determines that the defendant is unlikely to
19 regain competency, the court may dismiss the charges without
20 prejudice without ordering the defendant to undergo restoration
21 treatment, in which case the court shall order that the defendant be
22 referred for evaluation for civil commitment in the manner provided
23 in subsection (4) of this section.

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

28 (3) If the court finds by a preponderance of the evidence that a
29 defendant charged with a felony is incompetent, the court shall have
30 the option of extending the order of commitment or alternative
31 treatment for an additional period of ninety days, but the court must
32 at the time of extension set a date for a prompt hearing to determine
33 the defendant's competency before the expiration of the second
34 restoration period. The defendant, the defendant's attorney, or the
35 prosecutor has the right to demand that the hearing be before a jury.
36 No extension shall be ordered for a second or third restoration
37 period as provided in subsection (4) of this section if the
38 defendant's incompetence has been determined by the secretary to be
39 solely the result of a developmental disability which is such that
40 competence is not reasonably likely to be regained during an

1 extension. The ninety-day period includes only the time the defendant
2 is actually at the facility and is in addition to reasonable time for
3 transport to or from the facility.

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

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

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

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

37 (ii) May alternatively order the defendant to undergo evaluation
38 and treatment at some other facility as determined by the department,
39 or under the guidance and control of a professional person. The

1 facilities may include community mental health providers or other
2 local facilities that contract with the department and are willing
3 and able to provide treatment under this section. During the
4 2015-2017 fiscal biennium, the department may contract with one or
5 more cities or counties to provide competency restoration services in
6 a city or county jail if the city or county jail is willing and able
7 to serve as a location for competency restoration services and if the
8 secretary determines that there is an emergent need for beds and
9 documents the justification, including a plan to address the
10 emergency. Patients receiving competency restoration services in a
11 city or county jail must be physically separated from other
12 populations at the jail, must interact only with treatment staff and
13 not jail staff, and must be provided as much as possible with a
14 therapeutic environment. The placement under (a)(i) and (ii) of this
15 subsection shall not exceed fourteen days in addition to any unused
16 time of the evaluation under RCW 10.77.060. The court shall compute
17 this total period and include its computation in the order. The
18 fourteen-day period plus any unused time of the evaluation under RCW
19 10.77.060 shall be considered to include only the time the defendant
20 is actually at the facility and shall be in addition to reasonable
21 time for transport to or from the facility;

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

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

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

32 (c)(i) If the proceedings are dismissed under RCW 10.77.084 and
33 the defendant was on conditional release at the time of dismissal,
34 the court shall order the designated mental health professional
35 within that county to evaluate the defendant pursuant to chapter
36 71.05 RCW. The evaluation may be conducted in any location chosen by
37 the professional.

38 (ii) If the defendant was in custody and not on conditional
39 release at the time of dismissal, the defendant shall be detained and
40 sent to an evaluation and treatment facility for up to seventy-two

1 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
2 purposes of filing a petition under chapter 71.05 RCW. The seventy-
3 two-hour period shall commence upon the next nonholiday weekday
4 following the court order and shall run to the end of the last
5 nonholiday weekday within the seventy-two-hour period.

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

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

15 **Sec. 5.** RCW 10.77.091 and 2010 c 263 s 2 are each amended to
16 read as follows:

17 (1) If the secretary determines in writing that a person
18 committed to the custody of the secretary for treatment as criminally
19 insane presents an unreasonable safety risk which, based on behavior,
20 clinical history, and facility security is not manageable in a state
21 hospital setting, the secretary may place the person in any secure
22 facility operated by the secretary or the secretary of the department
23 of corrections. Any person affected by this provision shall receive
24 appropriate mental health treatment governed by a formalized
25 treatment plan targeted at mental health rehabilitation needs and
26 shall be afforded his or her rights under RCW 10.77.140, 10.77.150,
27 and 10.77.200. The secretary of the department of social and health
28 services shall retain legal custody of any person placed under this
29 section and review any placement outside of a department mental
30 health hospital every three months, or sooner if warranted by the
31 person's mental health status, to determine if the placement remains
32 appropriate.

33 (2) Beginning December 1, 2010, and every six months thereafter,
34 the secretary shall report to the governor and the appropriate
35 committees of the legislature regarding the use of the authority
36 under this section to transfer persons to a secure facility. The
37 report shall include information related to the number of persons who
38 have been placed in a secure facility operated by the secretary or

1 the secretary of the department of corrections, and the length of
2 time that each such person has been in the secure facility.

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

4 **Sec. 6.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to
5 read as follows:

6 No person who is criminally insane confined pursuant to this
7 chapter shall be incarcerated in a state correctional institution or
8 facility(~~(: PROVIDED, That nothing herein shall prohibit)~~). This
9 section does not apply to confinement in a mental health facility
10 located wholly within a correctional institution. Confinement of a
11 person who is criminally insane in a county jail or other local
12 facility while awaiting either placement in a treatment program or a
13 court hearing pursuant to this chapter is permitted for no more than
14 seven days.

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

17 (1) If the defendant is charged with a nonfelony offense, and the
18 issue of competency to stand trial is raised by the court or a party
19 under RCW 10.77.060, the prosecutor may continue with the competency
20 process or dismiss the charges without prejudice and refer the
21 defendant for assessment by a mental health professional, chemical
22 dependency professional, or developmental disabilities professional
23 to determine the appropriate service needs for the defendant.

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

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.77
28 RCW to read as follows:

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

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

- 1 (b) Responsibility for training forensic evaluators;
- 2 (c) Development of a system to certify forensic evaluators, and
3 to monitor the quality of forensic evaluation reports;
- 4 (d) Liaison with courts, jails, and community mental health
5 programs to ensure proper flow of information, coordinate logistical
6 issues, and solve problems in complex circumstances;
- 7 (e) Coordination with state hospitals to identify and develop
8 best practice interventions and curricula for services that are
9 unique to forensic patients;
- 10 (f) Promotion of congruence across state hospitals where
11 appropriate, and promotion of interventions that flow smoothly into
12 community interventions;
- 13 (g) Coordination with regional support networks, behavioral
14 health organizations, community mental health agencies, and the
15 department of corrections regarding community treatment and
16 monitoring of persons on conditional release;
- 17 (h) Oversight of forensic data collection and analysis statewide,
18 and appropriate dissemination of data trends and recommendations; and
- 19 (i) Oversight of the development, implementation, and maintenance
20 of community forensic programs and services.
- 21 (2) The office of forensic mental health services must have a
22 clearly delineated budget separate from the overall budget for state
23 hospital services.

24 **Sec. 9.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to
25 read as follows:

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

1 referred to an evaluation and treatment facility may be held at the
2 facility longer than seventy-two hours.

3 (2) If an individual is placed in an evaluation and treatment
4 facility under RCW 10.77.088(1)((~~b~~)) (c)(ii), a professional person
5 shall evaluate the individual for purposes of determining whether to
6 file a ninety-day inpatient or outpatient petition under chapter
7 71.05 RCW. Before expiration of the seventy-two hour evaluation
8 period authorized under RCW 10.77.088(1)((~~b~~)) (c)(ii), the
9 professional person shall file a petition or, if the recommendation
10 of the professional person is to release the individual, present his
11 or her recommendation to the superior court of the county in which
12 the criminal charge was dismissed. The superior court shall review
13 the recommendation not later than forty-eight hours, excluding
14 Saturdays, Sundays, and holidays, after the recommendation is
15 presented. If the court rejects the recommendation to unconditionally
16 release the individual, the court may order the individual detained
17 at a designated evaluation and treatment facility for not more than a
18 seventy-two hour evaluation and treatment period and direct the
19 individual to appear at a surety hearing before that court within
20 seventy-two hours, or the court may release the individual but direct
21 the individual to appear at a surety hearing set before that court
22 within eleven days, at which time the prosecutor may file a petition
23 under this chapter for ninety-day inpatient or outpatient treatment.
24 If a petition is filed by the prosecutor, the court may order that
25 the person named in the petition be detained at the evaluation and
26 treatment facility that performed the evaluation under this
27 subsection or order the respondent to be in outpatient treatment. If
28 a petition is filed but the individual fails to appear in court for
29 the surety hearing, the court shall order that a mental health
30 professional or peace officer shall take such person or cause such
31 person to be taken into custody and placed in an evaluation and
32 treatment facility to be brought before the court the next judicial
33 day after detention. Upon the individual's first appearance in court
34 after a petition has been filed, proceedings under RCW 71.05.310 and
35 71.05.320 shall commence. For an individual subject to this
36 subsection, the prosecutor or professional person may directly file a
37 petition for ninety-day inpatient or outpatient treatment and no
38 petition for initial detention or fourteen-day detention is required
39 before such a petition may be filed.

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

13 During the proceeding the person named in the petition shall
14 continue to be detained and treated until released by order of the
15 court. If no order has been made within thirty days after the filing
16 of the petition, not including any extensions of time requested by
17 the detained person or his or her attorney, the detained person shall
18 be released.

19 (3) If a designated mental health professional or the
20 professional person and prosecuting attorney for the county in which
21 the criminal charge was dismissed or attorney general, as
22 appropriate, stipulate that the individual does not present a
23 likelihood of serious harm or is not gravely disabled, the hearing
24 under this section is not required and the individual, if in custody,
25 shall be released.

26 (4) The individual shall have the rights specified in RCW
27 71.05.360 (8) and (9).

28 **Sec. 10.** RCW 10.77.065 and 2014 c 10 s 3 are each amended to
29 read as follows:

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

37 (ii) A copy of the report and recommendation shall be provided to
38 the designated mental health professional, the prosecuting attorney,
39 the defense attorney, and the professional person at the local

1 correctional facility where the defendant is being held, or if there
2 is no professional person, to the person designated under (a)(iv) of
3 this subsection. Upon request, the evaluator shall also provide
4 copies of any source documents relevant to the evaluation to the
5 designated mental health professional.

6 (iii) Any facility providing inpatient services related to
7 competency shall discharge the defendant as soon as the facility
8 determines that the defendant is competent to stand trial. Discharge
9 shall not be postponed during the writing and distribution of the
10 evaluation report. Distribution of an evaluation report by a facility
11 providing inpatient services shall ordinarily be accomplished within
12 two working days or less following the final evaluation of the
13 defendant. If the defendant is discharged to the custody of a local
14 correctional facility, the local correctional facility must continue
15 the medication regimen prescribed by the facility, when clinically
16 appropriate, unless the defendant refuses to cooperate with
17 medication and an involuntary medication order by the court has not
18 been entered.

19 (iv) If there is no professional person at the local correctional
20 facility, the local correctional facility shall designate a
21 professional person as defined in RCW 71.05.020 or, in cooperation
22 with the regional support network, a professional person at the
23 regional support network to receive the report and recommendation.

24 (v) Upon commencement of a defendant's evaluation in the local
25 correctional facility, the local correctional facility must notify
26 the evaluator of the name of the professional person, or person
27 designated under (a)(iv) of this subsection, to receive the report
28 and recommendation.

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

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

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

4 (4) A facility conducting a civil commitment evaluation under RCW
5 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a
6 determination to release the person instead of filing a civil
7 commitment petition must provide written notice to the prosecutor and
8 defense attorney at least twenty-four hours prior to release. The
9 notice may be given by electronic mail, facsimile, or other means
10 reasonably likely to communicate the information immediately.

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

16 **Sec. 11.** RCW 10.77.065 and 2014 c 225 s 59 and 2014 c 10 s 3 are
17 each reenacted and amended to read as follows:

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

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

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

1 defendant. If the defendant is discharged to the custody of a local
2 correctional facility, the local correctional facility must continue
3 the medication regimen prescribed by the facility, when clinically
4 appropriate, unless the defendant refuses to cooperate with
5 medication and an involuntary medication order by the court has not
6 been entered.

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

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

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

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

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

33 (4) A facility conducting a civil commitment evaluation under RCW
34 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a
35 determination to release the person instead of filing a civil
36 commitment petition must provide written notice to the prosecutor and
37 defense attorney at least twenty-four hours prior to release. The
38 notice may be given by electronic mail, facsimile, or other means
39 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 NEW SECTION. **Sec. 12.** If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. **Sec. 13.** Section 10 of this act expires April 1,
11 2016.

12 NEW SECTION. **Sec. 14.** Section 11 of this act takes effect April
13 1, 2016."

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By Senators O'Ban, Darneille

ADOPTED 3/4/2015

14 On page 1, line 1 of the title, after "Relating to" strike the
15 remainder of the title and insert "improving timeliness of competency
16 evaluation and restoration services; amending RCW 10.77.084,
17 10.77.086, 10.77.088, 10.77.091, 10.77.220, 71.05.235, and 10.77.065;
18 reenacting and amending RCW 10.77.065; adding new sections to chapter
19 10.77 RCW; creating a new section; providing an effective date; and
20 providing an expiration date."

EFFECT: Adds the provisions of SB 5266 (removing expiration date from DSHS authority to place a criminal insanity patient who presents an unreasonable safety risk in a DOC facility for treatment), SB 5792 (establishing an Office of Forensic Mental Health Services within DSHS), and SSB 5925 (allowing prosecutors to dismiss nonfelony charges after competency to stand trial is raised and refer defendant for assessment for services). Amends the title.

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