

E2SSB 5177 - S AMD 472

By Senators O'Ban, Darneille

ADOPTED 5/28/2015

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. 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 inpatient psychiatric hospitalization level services.

11 (2) The department of social and health services shall work with
12 counties and the court to develop a screening process to determine
13 which individuals are safe to receive competency restoration
14 treatment outside the state hospitals.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.77
16 RCW to read as follows:

17 Within twenty-four hours of the signing of a court order
18 requesting the secretary to provide a competency evaluation or
19 competency restoration treatment:

20 (1) The clerk of the court shall provide the court order and the
21 charging documents, including the request for bail and certification
22 of probable cause, to the state hospital. If the order is for
23 competency restoration treatment and the competency evaluation was
24 provided by a qualified expert or professional person who was not
25 designated by the secretary, the clerk shall also provide the state
26 hospital with a copy of all previous court orders related to
27 competency or criminal insanity and a copy of any of the evaluation
28 reports;

29 (2) The prosecuting attorney shall provide the discovery packet,
30 including a statement of the defendant's criminal history, to the
31 state hospital; and

1 (3) If the court order requires transportation of the defendant
2 to a state hospital, the jail administrator shall provide the
3 defendant's medical clearance information to the state hospital
4 admission staff.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.77
6 RCW to read as follows:

7 (1) A city or county jail shall transport a defendant to a state
8 hospital or other secure facility designated by the department within
9 one day of receipt of an offer of admission of the defendant for
10 competency evaluation or restoration services.

11 (2) City and county jails must cooperate with competency
12 evaluators and the department to arrange for competency evaluators to
13 have reasonable, timely, and appropriate access to defendants for the
14 purpose of performing evaluations under this chapter to accommodate
15 the seven-day performance target for completing competency
16 evaluations for defendants in custody.

17 **Sec. 4.** RCW 10.77.084 and 2012 c 256 s 5 are each amended to
18 read as follows:

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

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

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

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

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

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

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

39 (4) A defendant receiving medication for either physical or
40 mental problems shall not be prohibited from standing trial, if the

1 medication either enables the defendant to understand the proceedings
2 against him or her and to assist in his or her own defense, or does
3 not disable him or her from so understanding and assisting in his or
4 her own defense.

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

16 **Sec. 5.** RCW 10.77.086 and 2013 c 289 s 2 are each amended to
17 read as follows:

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

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

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

1 receiving competency restoration services in a city or county jail
2 must be physically separated from other populations at the jail and
3 restoration treatment services must be provided as much as possible
4 within a therapeutic environment.

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

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

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

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

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

1 is actually at the facility and is in addition to reasonable time for
2 transport to or from the facility.

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

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

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

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

38 (ii) May alternatively order the defendant to undergo evaluation
39 and treatment at some other facility or provider as determined by the

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

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

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

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

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

39 (ii) If the defendant was in custody and not on conditional
40 release at the time of dismissal, the defendant shall be detained and

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

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

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

16 **Sec. 7.** RCW 10.77.073 and 2013 c 284 s 1 are each amended to
17 read as follows:

18 (1) The department shall reimburse a county for the cost of
19 appointing a qualified expert or professional person under RCW
20 10.77.060(1)(a) subject to subsections (2) through (4) of this
21 section if, at the time of a referral for an evaluation of competency
22 to stand trial in a jail for an in-custody defendant, the department
23 ((has not met)): (a) During the most recent quarter, did not perform
24 at least one-third of the number of jail-based competency evaluations
25 for in-custody defendants as were performed by qualified experts or
26 professional persons appointed by the court in the referring county;
27 or (b) did not meet the performance target for timely completion of
28 competency evaluations under RCW 10.77.068(1)(a)((-ii)) (iii) during
29 the most recent quarter in fifty percent of cases submitted by the
30 referring county, as documented in the most recent quarterly report
31 under RCW 10.77.068(3) or confirmed by records maintained by the
32 department((, the department shall reimburse the county for the cost
33 of appointing a qualified expert or professional person under RCW
34 10.77.060(1)(a) subject to subsections (2) and (3) of this section)).

35 (2) Appointment of a qualified expert or professional person
36 under this section must be from a list of qualified experts or
37 professional persons assembled with participation by representatives
38 of the prosecuting attorney and the defense bar of the county. The
39 qualified expert or professional person shall complete an evaluation

1 and report that includes the components specified in RCW
2 10.77.060(3).

3 (3) The county shall provide a copy of the evaluation report to
4 the applicable state hospital upon referral of the defendant for
5 admission to the state hospital. The county shall ~~((maintain data on
6 the timeliness of competency evaluations completed under this
7 section))~~:

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

11 (b) Share this data with the department upon the department's
12 request.

13 (4) A qualified expert or professional person appointed by a
14 court under this section must be compensated for competency
15 evaluations in an amount that will encourage in-depth evaluation
16 reports. Subject to the availability of amounts appropriated for this
17 specific purpose, the department shall reimburse the county in an
18 amount determined by the department to be fair and reasonable with
19 the county paying any excess costs. The amount of reimbursement
20 established by the department must at least meet the equivalent
21 amount for evaluations conducted by the department.

22 ~~((4)-(5))~~ (5) Nothing in this section precludes either party
23 from objecting to the appointment of an evaluator on the basis that
24 an inpatient evaluation is appropriate under RCW 10.77.060(1)(d).

25 ~~((5)-(6))~~ (6) This section expires June 30, ~~((2016))~~ 2019.

26 **Sec. 8.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to
27 read as follows:

28 No person who is criminally insane confined pursuant to this
29 chapter shall be incarcerated in a state correctional institution or
30 facility~~((: PROVIDED, That nothing herein shall prohibit))~~. This
31 section does not apply to confinement in a mental health facility
32 located wholly within a correctional institution. Confinement of a
33 person who is criminally insane in a county jail or other local
34 facility while awaiting either placement in a treatment program or a
35 court hearing pursuant to this chapter is permitted for no more than
36 seven days.

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

1 (1) If the issue of competency to stand trial is raised by the
2 court or a party under RCW 10.77.060, the prosecutor may continue
3 with the competency process or dismiss the charges without prejudice
4 and refer the defendant for assessment by a mental health
5 professional, chemical dependency professional, or developmental
6 disabilities professional to determine the appropriate service needs
7 for the defendant.

8 (2) This section does not apply to defendants with a current
9 charge or prior conviction for a violent offense or sex offense as
10 defined in RCW 9.94A.030, or a violation of RCW 9A.36.031(1) (d),
11 (f), or (h).

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

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

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

23 (b) Responsibility for training forensic evaluators;

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

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

29 (e) Coordination with state hospitals to identify and develop
30 best practice interventions and curricula for services that are
31 unique to forensic patients;

32 (f) Promotion of congruence across state hospitals where
33 appropriate, and promotion of interventions that flow smoothly into
34 community interventions;

35 (g) Coordination with regional support networks, behavioral
36 health organizations, community mental health agencies, and the
37 department of corrections regarding community treatment and
38 monitoring of persons on conditional release;

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

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

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

8 NEW SECTION. **Sec. 11.** A new section is added to chapter 10.77
9 RCW to read as follows:

10 The secretary shall adopt rules as may be necessary to implement
11 chapter . . . , Laws of 2015 1st sp. sess. (this act).

12 NEW SECTION. **Sec. 12.** By December 31, 2015, the administrative
13 office of the courts shall develop and prepare standard forms for
14 court orders for: (1) Forensic evaluation and competency restoration
15 services under chapter 10.77 RCW; and (2) involuntary civil
16 commitment under chapter 71.05 RCW. In developing the standard court
17 order forms, the administrative office of the courts shall consult
18 with representatives from the superior courts and county clerks, the
19 department of social and health services including the state
20 hospitals, the attorney general's office, prosecuting attorneys,
21 defense attorneys, the Washington state association of counties,
22 disability rights Washington, and tribal and community mental health
23 groups.

24 NEW SECTION. **Sec. 13.** There is established a court video
25 testimony work group, to be composed of representatives from the
26 administrative office of the courts, the superior courts, the
27 department of social and health services including the state
28 hospitals, prosecuting attorneys, defense attorneys, the Washington
29 state association of counties, the attorney general's office, and
30 disability rights Washington. The purpose of the work group is to
31 consider and facilitate the use of video testimony by state
32 competency evaluators and other representatives of the department of
33 social and health services and the state hospitals in court matters
34 under chapter 10.77 RCW. The work group must consider the
35 applicability of local rules and the confrontation rights of the
36 defendant. The administrative office of the courts is requested to

1 convene and provide staffing to the work group. The work group must
2 complete its work by June 30, 2016.

3 **Sec. 14.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to
4 read as follows:

5 (1) If an individual is referred to a designated mental health
6 professional under RCW 10.77.088(1)((~~b~~)) (c)(i), the designated
7 mental health professional shall examine the individual within forty-
8 eight hours. If the designated mental health professional determines
9 it is not appropriate to detain the individual or petition for a
10 ninety-day less restrictive alternative under RCW 71.05.230(4), that
11 decision shall be immediately presented to the superior court for
12 hearing. The court shall hold a hearing to consider the decision of
13 the designated mental health professional not later than the next
14 judicial day. At the hearing the superior court shall review the
15 determination of the designated mental health professional and
16 determine whether an order should be entered requiring the person to
17 be evaluated at an evaluation and treatment facility. No person
18 referred to an evaluation and treatment facility may be held at the
19 facility longer than seventy-two hours.

20 (2) If an individual is placed in an evaluation and treatment
21 facility under RCW 10.77.088(1)((~~b~~)) (c)(ii), a professional person
22 shall evaluate the individual for purposes of determining whether to
23 file a ninety-day inpatient or outpatient petition under chapter
24 71.05 RCW. Before expiration of the seventy-two hour evaluation
25 period authorized under RCW 10.77.088(1)((~~b~~)) (c)(ii), the
26 professional person shall file a petition or, if the recommendation
27 of the professional person is to release the individual, present his
28 or her recommendation to the superior court of the county in which
29 the criminal charge was dismissed. The superior court shall review
30 the recommendation not later than forty-eight hours, excluding
31 Saturdays, Sundays, and holidays, after the recommendation is
32 presented. If the court rejects the recommendation to unconditionally
33 release the individual, the court may order the individual detained
34 at a designated evaluation and treatment facility for not more than a
35 seventy-two hour evaluation and treatment period and direct the
36 individual to appear at a surety hearing before that court within
37 seventy-two hours, or the court may release the individual but direct
38 the individual to appear at a surety hearing set before that court
39 within eleven days, at which time the prosecutor may file a petition

1 under this chapter for ninety-day inpatient or outpatient treatment.
2 If a petition is filed by the prosecutor, the court may order that
3 the person named in the petition be detained at the evaluation and
4 treatment facility that performed the evaluation under this
5 subsection or order the respondent to be in outpatient treatment. If
6 a petition is filed but the individual fails to appear in court for
7 the surety hearing, the court shall order that a mental health
8 professional or peace officer shall take such person or cause such
9 person to be taken into custody and placed in an evaluation and
10 treatment facility to be brought before the court the next judicial
11 day after detention. Upon the individual's first appearance in court
12 after a petition has been filed, proceedings under RCW 71.05.310 and
13 71.05.320 shall commence. For an individual subject to this
14 subsection, the prosecutor or professional person may directly file a
15 petition for ninety-day inpatient or outpatient treatment and no
16 petition for initial detention or fourteen-day detention is required
17 before such a petition may be filed.

18 The court shall conduct the hearing on the petition filed under
19 this subsection within five judicial days of the date the petition is
20 filed. The court may continue the hearing upon the written request of
21 the person named in the petition or the person's attorney, for good
22 cause shown, which continuance shall not exceed five additional
23 judicial days. If the person named in the petition requests a jury
24 trial, the trial shall commence within ten judicial days of the date
25 of the filing of the petition. The burden of proof shall be by clear,
26 cogent, and convincing evidence and shall be upon the petitioner. The
27 person shall be present at such proceeding, which shall in all
28 respects accord with the constitutional guarantees of due process of
29 law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

30 During the proceeding the person named in the petition shall
31 continue to be detained and treated until released by order of the
32 court. If no order has been made within thirty days after the filing
33 of the petition, not including any extensions of time requested by
34 the detained person or his or her attorney, the detained person shall
35 be released.

36 (3) If a designated mental health professional or the
37 professional person and prosecuting attorney for the county in which
38 the criminal charge was dismissed or attorney general, as
39 appropriate, stipulate that the individual does not present a
40 likelihood of serious harm or is not gravely disabled, the hearing

1 under this section is not required and the individual, if in custody,
2 shall be released.

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

5 **Sec. 15.** RCW 10.77.065 and 2014 c 10 s 3 are each amended to
6 read as follows:

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

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

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

35 (iv) If there is no professional person at the local correctional
36 facility, the local correctional facility shall designate a
37 professional person as defined in RCW 71.05.020 or, in cooperation
38 with the regional support network, a professional person at the
39 regional support network to receive the report and recommendation.

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

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

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

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

21 (4) A facility conducting a civil commitment evaluation under RCW
22 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a
23 determination to release the person instead of filing a civil
24 commitment petition must provide written notice to the prosecutor and
25 defense attorney at least twenty-four hours prior to release. The
26 notice may be given by electronic mail, facsimile, or other means
27 reasonably likely to communicate the information immediately.

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

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

35 (1)(a)(i) The expert conducting the evaluation shall provide his
36 or her report and recommendation to the court in which the criminal
37 proceeding is pending. For a competency evaluation of a defendant who
38 is released from custody, if the evaluation cannot be completed
39 within twenty-one days due to a lack of cooperation by the defendant,

1 the evaluator shall notify the court that he or she is unable to
2 complete the evaluation because of such lack of cooperation.

3 (ii) A copy of the report and recommendation shall be provided to
4 the designated mental health professional, the prosecuting attorney,
5 the defense attorney, and the professional person at the local
6 correctional facility where the defendant is being held, or if there
7 is no professional person, to the person designated under (a)(iv) of
8 this subsection. Upon request, the evaluator shall also provide
9 copies of any source documents relevant to the evaluation to the
10 designated mental health professional.

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

24 (iv) If there is no professional person at the local correctional
25 facility, the local correctional facility shall designate a
26 professional person as defined in RCW 71.05.020 or, in cooperation
27 with the behavioral health organization, a professional person at the
28 behavioral health organization to receive the report and
29 recommendation.

30 (v) Upon commencement of a defendant's evaluation in the local
31 correctional facility, the local correctional facility must notify
32 the evaluator of the name of the professional person, or person
33 designated under (a)(iv) of this subsection, to receive the report
34 and recommendation.

35 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
36 person should be evaluated by a designated mental health professional
37 under chapter 71.05 RCW, the court shall order such evaluation be
38 conducted prior to release from confinement when the person is
39 acquitted or convicted and sentenced to confinement for twenty-four

1 months or less, or when charges are dismissed pursuant to a finding
2 of incompetent to stand trial.

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

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

11 (4) A facility conducting a civil commitment evaluation under RCW
12 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a
13 determination to release the person instead of filing a civil
14 commitment petition must provide written notice to the prosecutor and
15 defense attorney at least twenty-four hours prior to release. The
16 notice may be given by electronic mail, facsimile, or other means
17 reasonably likely to communicate the information immediately.

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

23 NEW SECTION. **Sec. 17.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 18.** Section 15 of this act expires April 1,
28 2016.

29 NEW SECTION. **Sec. 19.** (1) Section 7 of this act is necessary
30 for the immediate preservation of the public peace, health, or
31 safety, or support of the state government and its existing public
32 institutions, and takes effect immediately.

33 (2) Sections 1 through 6 and 8 through 15 of this act are
34 necessary for the immediate preservation of the public peace, health,
35 or safety, or support of the state government and its existing public
36 institutions, and take effect July 1, 2015.

37 (3) Section 16 of this act takes effect April 1, 2016.

1 NEW SECTION. **Sec. 20.** Section 1, chapter 253, Laws of 2015 is
2 necessary for the immediate preservation of the public peace, health,
3 or safety, or support of the state government and its existing public
4 institutions, and takes effect June 30, 2015."

E2SSB 5177 - S AMD **472**
By Senators O'Ban, Darneille

ADOPTED 5/28/2015

5 On page 1, line 1 of the title, after "Relating to" strike the
6 remainder of the title and insert "improving forensic mental health
7 services; amending RCW 10.77.084, 10.77.086, 10.77.088, 10.77.073,
8 10.77.220, 71.05.235, and 10.77.065; reenacting and amending RCW
9 10.77.065; adding new sections to chapter 10.77 RCW; creating new
10 sections; providing effective dates; providing expiration dates; and
11 declaring an emergency."

EFFECT: DSHS must work with counties and courts to develop a screening process to determine which individuals are safe to receive competency restoration treatment outside the state hospitals. Within 24 hours of the signing of a court order related to competency to stand trial, the clerk of court, prosecuting attorney, and jail administrator (if applicable) must provide specified documents, court records, and medical clearance information to the state hospital. City and county jails must transport a defendant to a state hospital within one day of receipt of an offer of admission for the defendant for competency services and must cooperate with competency evaluators and DSHS to provide reasonable, timely, and appropriate access to defendants for the purpose of performing competency evaluations. Defendants receiving competency restoration treatment in a city or county jail may interact with jail staff. The expiration date of DSHS' obligation to reimburse counties for the cost of appointing local experts to perform competency evaluations under certain circumstances, which are expanded, is extended three years until June 30, 2019. A prosecutor may dismiss any charges when competency to stand trial is raised and refer the defendant for an assessment for services, but only if the defendant does not have a current charge or prior conviction for a violent offense, sex offense, or certain forms of assault in the third degree. The Administrative Office of the Courts must develop standard forms for court orders related to civil commitment and competency to stand trial and must convene a court video testimony work group. Emergency clauses are added and an amendment is made to the bill title.

--- END ---