
SUBSTITUTE SENATE BILL 5177

State of Washington

64th Legislature

2015 Regular Session

By Senate Human Services, Mental Health & Housing (originally sponsored by Senators O'Ban and Darneille; by request of Department of Social and Health Services)

READ FIRST TIME 02/06/15.

1 AN ACT Relating to improving timeliness of competency evaluation
2 and restoration services, by clarifying alternative locations for the
3 provision of competency restoration services and defining time
4 periods of commitment; amending RCW 10.77.086, 10.77.088, and
5 10.77.220; adding a new section to chapter 10.77 RCW; and creating a
6 new section.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

18 (1)(a) If the defendant is charged with a felony and determined
19 to be incompetent, until he or she has regained the competency
20 necessary to understand the proceedings against him or her and assist

1 in his or her own defense, or has been determined unlikely to regain
2 competency pursuant to RCW 10.77.084(1)(b), but in any event for a
3 period of no longer than ninety days, the court:

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

7 (ii) May alternatively order the defendant to undergo evaluation
8 and treatment at some other facility as determined by the department,
9 or under the guidance and control of a professional person. The
10 facilities may include community mental health providers or other
11 local facilities that contract with the department and are willing
12 and able to provide treatment under this section. During the
13 2015-2017 fiscal biennium, county jails may be used for this purpose
14 if the secretary determines there is an emergent need for beds and
15 documents the justification, including a plan to address the
16 emergency; however, competency restoration patients must be
17 physically separated from other populations at the jail, must
18 interact only with treatment staff and not jail staff, and must be
19 provided as much as possible with a therapeutic environment.

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

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

31 (3) If the court finds by a preponderance of the evidence that a
32 defendant charged with a felony is incompetent, the court shall have
33 the option of extending the order of commitment or alternative
34 treatment for an additional period of ninety days, but the court must
35 at the time of extension set a date for a prompt hearing to determine
36 the defendant's competency before the expiration of the second
37 restoration period. The defendant, the defendant's attorney, or the
38 prosecutor has the right to demand that the hearing be before a jury.
39 No extension shall be ordered for a second or third restoration
40 period as provided in subsection (4) of this section if the

1 defendant's incompetence has been determined by the secretary to be
2 solely the result of a developmental disability which is such that
3 competence is not reasonably likely to be regained during an
4 extension. The ninety-day period includes only the time the defendant
5 is actually at the facility and is in addition to reasonable time for
6 transport to or from the facility.

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

28 **Sec. 3.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to
29 read as follows:

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

34 (i) At a secure mental health facility in the custody of the
35 department or an agency designated by the department for mental
36 health treatment and restoration of competency. The agencies may
37 include community mental health providers or other local facilities
38 that contract with the department and are willing and able to provide
39 treatment under this section. During the 2015-2017 fiscal biennium,

1 county jails may be used for this purpose if the secretary determines
2 there is an emergent need for beds and documents the justification,
3 including a plan to address the emergency; however, competency
4 restoration patients must be physically separated from other
5 populations at the jail, must interact only with treatment staff and
6 not jail staff, and must be provided as much as possible with a
7 therapeutic environment. The placement shall not exceed fourteen days
8 in addition to any unused time of the evaluation under RCW 10.77.060.
9 The court shall compute this total period and include its computation
10 in the order. The fourteen-day period plus any unused time of the
11 evaluation under RCW 10.77.060 shall be considered to include only
12 the time the defendant is actually at the facility and shall be in
13 addition to reasonable time for transport to or from the facility;

14 (ii) On conditional release for up to ninety days for mental
15 health treatment and restoration of competency; or

16 (iii) Any combination of this subsection.

17 (b)(i) If the proceedings are dismissed under RCW 10.77.084 and
18 the defendant was on conditional release at the time of dismissal,
19 the court shall order the designated mental health professional
20 within that county to evaluate the defendant pursuant to chapter
21 71.05 RCW. The evaluation may be conducted in any location chosen by
22 the professional.

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

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

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

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

3 No person who is criminally insane confined pursuant to this
4 chapter shall be incarcerated in a state correctional institution or
5 facility: PROVIDED, That nothing herein shall prohibit confinement in
6 a mental health facility located wholly within a correctional
7 institution. Confinement of a person who is criminally insane in a
8 county jail or other local facility while awaiting either placement
9 in a treatment program or a court hearing pursuant to this chapter is
10 permitted for no more than seven days.

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

13 A new secure facility developed under this chapter for inpatient
14 treatment of defendants ordered to receive competency restoration may
15 not be sited within five hundred feet of the facilities and grounds
16 of a public or private school.

17 NEW SECTION. **Sec. 6.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

--- END ---