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SECOND SUBSTITUTE SENATE BILL 5177

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State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators O'Ban and Darneille; by request of Department of Social and Health Services)

READ FIRST TIME 02/25/15.

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, the department may contract with one or  
14 more city or county jails, if the city or county jail is willing and  
15 able, to provide competency restoration services in a city or county  
16 jail if the secretary determines there is an emergent need for beds  
17 and documents the justification, including a plan to address the  
18 emergency; however, competency restoration patients must be  
19 physically separated from other populations at the jail, must  
20 interact only with treatment staff and not jail staff, and must be  
21 provided as much as possible with a therapeutic environment.

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

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

33 (3) If the court finds by a preponderance of the evidence that a  
34 defendant charged with a felony is incompetent, the court shall have  
35 the option of extending the order of commitment or alternative  
36 treatment for an additional period of ninety days, but the court must  
37 at the time of extension set a date for a prompt hearing to determine  
38 the defendant's competency before the expiration of the second  
39 restoration period. The defendant, the defendant's attorney, or the  
40 prosecutor has the right to demand that the hearing be before a jury.

1 No extension shall be ordered for a second or third restoration  
2 period as provided in subsection (4) of this section if the  
3 defendant's incompetence has been determined by the secretary to be  
4 solely the result of a developmental disability which is such that  
5 competence is not reasonably likely to be regained during an  
6 extension. The ninety-day period includes only the time the defendant  
7 is actually at the facility and is in addition to reasonable time for  
8 transport to or from the facility.

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

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

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

36 (i) At a secure mental health facility in the custody of the  
37 department or an agency designated by the department for mental  
38 health treatment and restoration of competency. The agencies may  
39 include community mental health providers or other local facilities

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

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

21 (iii) Any combination of this subsection.

22 (b)(i) If the proceedings are dismissed under RCW 10.77.084 and  
23 the defendant was on conditional release at the time of dismissal,  
24 the court shall order the designated mental health professional  
25 within that county to evaluate the defendant pursuant to chapter  
26 71.05 RCW. The evaluation may be conducted in any location chosen by  
27 the professional.

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

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

38 The court may stay or dismiss proceedings and detain the  
39 defendant for sufficient time to allow the designated mental health  
40 professional to evaluate the defendant and consider initial detention

1 proceedings under chapter 71.05 RCW. The court must give notice to  
2 all parties at least twenty-four hours before the dismissal of any  
3 proceeding under this subsection, and provide an opportunity for a  
4 hearing on whether to dismiss the proceedings.

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

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

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

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

21 NEW SECTION. **Sec. 6.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

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