

**E2SSB 5444** - H COMM AMD

By Committee on Civil Rights & Judiciary

**NOT ADOPTED 04/15/2019**

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

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that there has  
4 been a nationwide increase in the number of individuals with  
5 behavioral health disorders in the criminal justice system. The  
6 legislature also recognizes that reforms must be made to our own  
7 behavioral health systems and services to meet the increasing demands  
8 in our state, to provide timely competency evaluations and  
9 restoration services, and to comply with federal court orders issued  
10 in *A.B., by and through Trueblood, et al., v. DSHS, et al.*, No.  
11 15-35462 ("Trueblood"). The legislature acknowledges that these  
12 reforms will require the support of a broad range of stakeholders,  
13 including local law enforcement, prosecuting attorneys, defense  
14 attorneys, community members, and health care providers. The  
15 legislature further acknowledges the significant efforts of the  
16 parties to the Trueblood litigation to establish a roadmap and  
17 framework within their settlement agreement for proposed systemic  
18 reforms to the forensic mental health care system. It is the intent  
19 of the legislature to enact appropriate reforms consistent with the  
20 goals agreed to in the Trueblood settlement agreement, to continue to  
21 engage with stakeholders and community partners to address the needs  
22 of this vulnerable population, and to ensure that the public safety  
23 needs of our communities are met.

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

26 (1) Subject to the limitations described in this section, a court  
27 may appoint an impartial forensic navigator employed by or contracted  
28 by the department to assist individuals who have been referred for  
29 competency evaluation.

30 (2) A forensic navigator must assist the individual to access  
31 services related to diversion and community outpatient competency

1 restoration. The forensic navigator must assist the individual,  
2 prosecuting attorney, defense attorney, and the court to understand  
3 the options available to the individual and be accountable as an  
4 officer of the court for faithful execution of the responsibilities  
5 outlined in this section.

6 (3) The duties of the forensic navigator include, but are not  
7 limited to, the following:

8 (a) To collect relevant information about the individual,  
9 including behavioral health services and supports available to the  
10 individual that might support placement in outpatient restoration,  
11 diversion, or some combination of these;

12 (b) To meet with, interview, and observe the individual;

13 (c) To present information to the court in order to assist the  
14 court in understanding the treatment options available to the  
15 individual to support the entry of orders for diversion from the  
16 forensic mental health system or for community outpatient competency  
17 restoration, and to facilitate that transition; and

18 (d) When the individual is ordered to receive community  
19 outpatient restoration, to provide services to the individual  
20 including:

21 (i) Assisting the individual with attending appointments and  
22 classes relating to outpatient competency restoration;

23 (ii) Coordinating access to housing for the individual;

24 (iii) Meeting with the individual on a regular basis;

25 (iv) Providing information to the court concerning the  
26 individual's progress and compliance with court-ordered conditions of  
27 release, which may include appearing at court hearings to provide  
28 information to the court;

29 (v) Coordinating the individual's access to community case  
30 management services and mental health services;

31 (vi) Assisting the individual with obtaining prescribed  
32 medication and encouraging adherence with prescribed medication;

33 (vii) Planning for a coordinated transition of the individual to  
34 a case manager in the community behavioral health system;

35 (viii) Attempting to follow up with the individual to check  
36 whether the meeting with a community-based case manager took place;

37 (ix) When the individual is a high utilizer, attempting to  
38 connect the individual with high utilizer services; and

39 (x) Attempting to check up on the individual at least once per  
40 month for up to sixty days after coordinated transition to community

1 behavioral health services, without duplicating the services of the  
2 community-based case manager.

3 (4) Forensic navigators may submit nonclinical recommendations to  
4 the court regarding treatment and restoration options for the  
5 individual, which the court may consider and weigh in conjunction  
6 with the recommendations of all of the parties.

7 (5) Forensic navigators shall be deemed officers of the court for  
8 the purpose of immunity from civil liability.

9 (6) The signed order for competency evaluation from the court  
10 shall serve as authority for the forensic navigator to be given  
11 access to all records held by a behavioral health, educational, or  
12 law enforcement agency or a correctional facility that relates to an  
13 individual. Information that is protected by state or federal law,  
14 including health information, shall not be entered into the court  
15 record without the consent of the individual or their defense  
16 attorney.

17 (7) Admissions made by the individual in the course of receiving  
18 services from the forensic navigator may not be used against the  
19 individual in the prosecution's case in chief.

20 (8) A court may not issue an order appointing a forensic  
21 navigator unless the department certifies that there is adequate  
22 forensic navigator capacity to provide these services at the time the  
23 order is issued.

24 **Sec. 3.** RCW 10.31.110 and 2014 c 225 s 57 are each amended to  
25 read as follows:

26 (1) When a police officer has reasonable cause to believe that  
27 the individual has committed acts constituting a ~~((nonfelony))~~ crime  
28 ~~((that is not a serious offense as identified in RCW 10.77.092))~~, and  
29 the individual is known by history or consultation with the  
30 behavioral health organization, managed care organization, behavioral  
31 health administrative services organization, crisis hotline, or local  
32 crisis services providers to suffer from a mental disorder, in  
33 addition to existing authority under state law, as an alternative to  
34 arrest, the arresting officer ~~((may))~~ is authorized and encouraged  
35 to:

36 (a) Take the individual to a crisis stabilization unit as defined  
37 in RCW 71.05.020 ~~((+6))~~. Individuals delivered to a crisis  
38 stabilization unit pursuant to this section may be held by the  
39 facility for a period of up to twelve hours. The individual must be

1 examined by a mental health professional within three hours of  
2 arrival;

3 (b) Take the individual to a triage facility as defined in RCW  
4 71.05.020. An individual delivered to a triage facility which has  
5 elected to operate as an involuntary facility may be held up to a  
6 period of twelve hours. The individual must be examined by a mental  
7 health professional within three hours of arrival;

8 (c) Refer the individual to a mental health professional for  
9 evaluation for initial detention and proceeding under chapter 71.05  
10 RCW; or

11 (d) Release the individual upon agreement to voluntary  
12 participation in outpatient treatment.

13 (2) If the individual is released to the community, the mental  
14 health provider shall make reasonable efforts to inform the arresting  
15 officer of the planned release (~~((within a reasonable period of time~~  
16 ~~after the))~~ prior to release if the arresting officer has  
17 specifically requested notification and provided contact information  
18 to the provider.

19 (3) In deciding whether to refer the individual to treatment  
20 under this section, the police officer (~~((shall))~~) must be guided by  
21 (~~((standards))~~) local law enforcement diversion guidelines for  
22 behavioral health developed and mutually agreed upon with the  
23 prosecuting authority(~~(, which))~~ with an opportunity for consultation  
24 and comment by the defense bar and disability community. These  
25 guidelines must address, at a minimum, the length, seriousness, and  
26 recency of the known criminal history of the individual, the mental  
27 health history of the individual, (~~((where))~~) if available, the  
28 opinions of a mental health professional, if available, and the  
29 circumstances surrounding the commission of the alleged offense. The  
30 guidelines must include a process for clearing outstanding warrants  
31 or referring the individual for assistance in clearing outstanding  
32 warrants, if any, and issuing a new court date, if appropriate,  
33 without booking or incarcerating the individual or disqualifying him  
34 or her from referral to treatment under this section, and define the  
35 circumstances under which such action is permissible.

36 (4) Any agreement to participate in treatment shall not require  
37 individuals to stipulate to any of the alleged facts regarding the  
38 criminal activity as a prerequisite to participation in a mental  
39 health treatment alternative. The agreement is inadmissible in any

1 criminal or civil proceeding. The agreement does not create immunity  
2 from prosecution for the alleged criminal activity.

3 (5) If an individual violates such agreement and the mental  
4 health treatment alternative is no longer appropriate:

5 (a) The mental health provider shall inform the referring law  
6 enforcement agency of the violation; and

7 (b) The original charges may be filed or referred to the  
8 prosecutor, as appropriate, and the matter may proceed accordingly.

9 (6) The police officer is immune from liability for any good  
10 faith conduct under this section.

11 **Sec. 4.** RCW 10.77.086 and 2015 1st sp.s. c 7 s 5 are each  
12 amended to read as follows:

13 (1)(a)(i) If the defendant is charged with a felony and  
14 determined to be incompetent, until he or she has regained the  
15 competency necessary to understand the proceedings against him or her  
16 and assist in his or her own defense, but in any event for a period  
17 of no longer than ninety days, the court(~~(~~

18 ~~(A)) shall commit the defendant to the custody of the secretary  
19 ((who shall place such defendant in an appropriate facility of the  
20 department for evaluation and treatment; or~~

21 ~~(B) May alternatively order the defendant to undergo evaluation  
22 and treatment at some other facility or provider as determined by the  
23 department, or under the guidance and control of a professional  
24 person. The facilities or providers may include community mental  
25 health providers or other local facilities that contract with the  
26 department and are willing and able to provide treatment under this  
27 section. During the 2015-2017 fiscal biennium, the department may  
28 contract with one or more cities or counties to provide competency  
29 restoration services in a city or county jail if the city or county  
30 jail is willing and able to serve as a location for competency  
31 restoration services and if the secretary determines that there is an  
32 emergent need for beds and documents the justification, including a  
33 plan to address the emergency. Patients receiving competency  
34 restoration services in a city or county jail must be physically  
35 separated from other populations at the jail and restoration  
36 treatment services must be provided as much as possible within a  
37 therapeutic environment.)) for competency restoration. Based on a  
38 recommendation from a forensic navigator and input from the parties,~~

1 the court may order the defendant to receive inpatient competency  
2 restoration or outpatient competency restoration.

3 (A) To be eligible for an order for outpatient competency  
4 restoration, a defendant must be clinically appropriate and be  
5 willing to:

6 (I) Adhere to medications or receive prescribed intravenous  
7 medication; and

8 (II) Abstain from alcohol and unprescribed drugs.

9 (B) If the court orders inpatient competency restoration, the  
10 department shall place the defendant in an appropriate facility of  
11 the department for competency restoration.

12 (C) If the court orders outpatient competency restoration, the  
13 court shall modify conditions of release as needed to authorize the  
14 department to place the person in approved housing, which may include  
15 access to supported housing, affiliated with a contracted outpatient  
16 competency restoration program. The health care authority must  
17 establish conditions of participation in the outpatient competency  
18 restoration program which must include the defendant being subject to  
19 medication management and regular urinalysis, as clinically  
20 appropriate. The outpatient competency restoration program shall  
21 monitor the defendant during the defendant's placement in the program  
22 and report any noncompliance or significant changes with respect to  
23 the defendant to the department and, if applicable, the forensic  
24 navigator.

25 (D) If a defendant fails to comply with the restrictions of the  
26 outpatient restoration program such that restoration is no longer  
27 appropriate in that setting or the defendant is no longer clinically  
28 appropriate for outpatient competency restoration, the department  
29 shall remove the defendant from the outpatient restoration program  
30 and place the defendant instead in an appropriate facility of the  
31 department for inpatient competency restoration for no longer than  
32 the remaining time period authorized in the original court order, in  
33 addition to reasonable time for transport to or from the facility.  
34 The department shall notify the court and parties of the change in  
35 placement before the close of the next judicial day. The court shall  
36 schedule a hearing within five days to review the placement and  
37 conditions of release of the defendant and issue appropriate orders.  
38 The standard of proof shall be a preponderance of the evidence, and  
39 the court may in its discretion render its decision based on written  
40 submissions, live testimony, or remote testimony.

1       (E) The court may not issue an order for outpatient competency  
2 restoration unless the department certifies that there is an  
3 available appropriate outpatient competency restoration program that  
4 has adequate space for the person at the time the order is issued or  
5 the court places the defendant under the guidance and control of a  
6 professional person identified in the court order.

7       (ii) The ninety day period for (~~evaluation and treatment~~)  
8 competency restoration under this subsection (1) includes only the  
9 time the defendant is actually at the facility and is in addition to  
10 reasonable time for transport 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 or the parties agree that the  
19 defendant is unlikely to regain competency, the court may dismiss the  
20 charges without prejudice without ordering the defendant to undergo  
21 restoration treatment, in which case the court shall order that the  
22 defendant be referred for evaluation for civil commitment in the  
23 manner provided 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, or if the court or jury at any stage finds  
9 that the defendant is incompetent and the court determines that the  
10 defendant is unlikely to regain competency, the charges shall be  
11 dismissed without prejudice, and the court shall order the defendant  
12 be committed to a state hospital as defined in RCW 72.23.010 for up  
13 to seventy-two hours starting from admission to the facility,  
14 excluding Saturdays, Sundays, and holidays, for evaluation for the  
15 purpose of filing a civil commitment petition under chapter 71.05  
16 RCW. The criminal charges shall not be dismissed if the court or jury  
17 finds that: (a) The defendant (i) is a substantial danger to other  
18 persons; or (ii) presents a substantial likelihood of committing  
19 criminal acts jeopardizing public safety or security; and (b) there  
20 is a substantial probability that the defendant will regain  
21 competency within a reasonable period of time. In the event that the  
22 court or jury makes such a finding, the court may extend the period  
23 of commitment for up to an additional six months. The six-month  
24 period includes only the time the defendant is actually at the  
25 facility and is in addition to reasonable time for transport to or  
26 from the facility.

27 **Sec. 5.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended  
28 to read as follows:

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

32 (a) Shall dismiss the proceedings without prejudice and detain  
33 the defendant for sufficient time to allow the designated crisis  
34 responder to evaluate the defendant and consider initial detention  
35 proceedings under chapter 71.05 RCW, unless the prosecutor objects to  
36 the dismissal and provides notice of a motion for an order for  
37 competency restoration, in which case the court shall schedule a  
38 hearing within seven days to determine whether to enter an order of  
39 competency restoration.

1 (b) At the hearing, the prosecuting attorney must establish that  
2 there is a compelling state interest to order competency restoration  
3 treatment for the defendant. The court may consider prior criminal  
4 history, prior history in treatment, prior history of violence, the  
5 quality and severity of the pending charges, any history that  
6 suggests whether or not competency restoration treatment is likely to  
7 be successful, in addition to the factors listed under RCW 10.77.092.  
8 If the prosecuting attorney proves by a preponderance of the evidence  
9 that there is a compelling state interest in ordering competency  
10 restoration, then the court shall order competency restoration in  
11 accordance with subsection (2)(a) of this section.

12 (2)(a) If a court finds pursuant to subsection (1)(b) of this  
13 section that there is a compelling state interest in pursuing  
14 competency restoration treatment, then the court ((-i-)) shall commit  
15 the defendant to the custody of the secretary ((who shall place such  
16 defendant in an appropriate facility of the department for evaluation  
17 and treatment;

18 ~~(ii) May alternatively order the defendant to undergo evaluation~~  
19 ~~and treatment at some other facility or provider as determined by the~~  
20 ~~department, or under the guidance and control of a professional~~  
21 ~~person. The facilities or providers may include community mental~~  
22 ~~health providers or other local facilities that contract with the~~  
23 ~~department and are willing and able to provide treatment under this~~  
24 ~~section. During the 2015-2017 fiscal biennium, the department may~~  
25 ~~contract with one or more cities or counties to provide competency~~  
26 ~~restoration services in a city or county jail if the city or county~~  
27 ~~jail is willing and able to serve as a location for competency~~  
28 ~~restoration services and if the secretary determines that there is an~~  
29 ~~emergent need for beds and documents the justification, including a~~  
30 ~~plan to address the emergency. Patients receiving competency~~  
31 ~~restoration services in a city or county jail must be physically~~  
32 ~~separated from other populations at the jail and restoration~~  
33 ~~treatment services must be provided as much as possible within a~~  
34 ~~therapeutic environment.)) for competency restoration. Based on a~~  
35 recommendation from a forensic navigator and input from the parties,  
36 the court may order the defendant to receive inpatient competency  
37 restoration or outpatient competency restoration.

38 (i) To be eligible for an order for outpatient competency  
39 restoration, a defendant must be clinically appropriate and be  
40 willing to:

1 (A) Adhere to medications or receive prescribed intravenous  
2 medication; and

3 (B) Abstain from alcohol and unprescribed drugs.

4 (ii) If the court orders inpatient competency restoration, the  
5 department shall place the defendant in an appropriate facility of  
6 the department for competency restoration under (b) of this  
7 subsection.

8 (iii) If the court orders outpatient competency restoration, the  
9 court shall modify conditions of release as needed to authorize the  
10 department to place the person in approved housing, which may include  
11 access to supported housing, affiliated with a contracted outpatient  
12 competency restoration program. The health care authority shall  
13 establish conditions of participation in the outpatient competency  
14 restoration program which must include the defendant being subject to  
15 medication management and regular urinalysis, as clinically  
16 appropriate. The outpatient competency restoration program shall  
17 monitor the defendant during the defendant's placement in the program  
18 and report any noncompliance or significant changes with respect to  
19 the defendant to the department and, if applicable, the forensic  
20 navigator.

21 (iv) If a defendant fails to comply with the restrictions of the  
22 outpatient competency restoration program such that restoration is no  
23 longer appropriate in that setting or the defendant is no longer  
24 clinically appropriate for outpatient competency restoration, the  
25 department shall remove the defendant from the outpatient restoration  
26 program and place the defendant instead in an appropriate facility of  
27 the department for inpatient competency restoration for no longer  
28 than the remaining time period authorized in the original court  
29 order, in addition to reasonable time for transport to or from the  
30 facility. The department shall notify the court and parties of the  
31 change in placement before the close of the next judicial day. The  
32 court shall schedule a hearing within five days to review the  
33 placement and conditions of release of the defendant and issue  
34 appropriate orders. The standard of proof shall be a preponderance of  
35 the evidence, and the court may in its discretion render its decision  
36 based on written submissions, live testimony, or remote testimony.

37 (v) The court may not issue an order for outpatient competency  
38 restoration unless the department certifies that there is an  
39 available appropriate outpatient restoration program that has  
40 adequate space for the person at the time the order is issued or the

1 court places the defendant under the guidance and control of a  
2 professional person identified in the court order.

3 (b) The placement under (a) (~~((i) and (ii))~~) of this subsection  
4 shall not exceed (~~(fourteen)~~) twenty-nine days (~~(in addition to any~~  
5 ~~unused time of the evaluation under RCW 10.77.060. The court shall~~  
6 ~~compute this total period and include its computation in the order.~~  
7 ~~The fourteen-day period plus any unused time of the evaluation under~~  
8 ~~RCW 10.77.060 shall)) if the defendant is ordered to receive  
9 inpatient competency restoration, or shall not exceed ninety days if  
10 the defendant is ordered to receive outpatient competency  
11 restoration. This period must be considered to include only the time  
12 the defendant is actually at the facility and shall be in addition to  
13 reasonable time for transport to or from the facility(~~(+~~~~

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

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

18 (~~((b))~~) (c) If the court has determined or the parties agree that  
19 the defendant is unlikely to regain competency, the court may dismiss  
20 the charges without prejudice without ordering the defendant to  
21 undergo restoration treatment, in which case the court shall order  
22 that the defendant be referred for evaluation for civil commitment in  
23 the manner provided in (~~((e))~~) (d) of this subsection.

24 (~~((e))~~) (d)(i) If the proceedings are dismissed under RCW  
25 10.77.084 and the defendant was on conditional release at the time of  
26 dismissal, the court shall order the designated crisis responder  
27 within that county to evaluate the defendant pursuant to chapter  
28 71.05 RCW. The evaluation may be conducted in any location chosen by  
29 the professional.

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

38 (~~((2))~~) (3) If the defendant is charged with a nonfelony crime  
39 that is not a serious offense as defined in RCW 10.77.092:

1       The court may stay or dismiss proceedings and detain the  
2 defendant for sufficient time to allow the designated crisis  
3 responder to evaluate the defendant and consider initial detention  
4 proceedings under chapter 71.05 RCW. The court must give notice to  
5 all parties at least twenty-four hours before the dismissal of any  
6 proceeding under this subsection, and provide an opportunity for a  
7 hearing on whether to dismiss the proceedings."

8       Correct the title.

EFFECT: Provides that forensic navigators are employed or contracted by the Department of Social and Health Services (DSHS) as opposed to authorized by DSHS. Clarifies that a court may order inpatient or outpatient competency restoration based on a recommendation by a forensic navigator and input from the parties, as opposed to only by recommendation from a competency evaluation. Changes the agency authorized to set conditions of participation for outpatient restoration from DSHS to the Health Care Authority. Makes changes to conditions of participation by requiring medication management instead of medication monitoring and modifying the regular urinalysis requirement to only as clinically appropriate. Clarifies that the time period allowed for inpatient competency restoration after a revocation from outpatient restoration is for no longer than the remaining time period authorized in the original court order, in addition to reasonable time for transport to or from the facility. Reinstates language that authorizes a court to place a defendant under the guidance and control of a professional person for outpatient competency restoration. Reinstates language that allows parties to stipulate that a defendant is unlikely to regain competency. Provides that a court must schedule a hearing on a prosecutor's motion for misdemeanor competency restoration within 7 days. Removes language authorizing a court to order a combination of inpatient and outpatient restoration. Makes a technical correction related to the administration of injectable medication.

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