

2SSB 5664 - H COMM AMD

By Committee on Civil Rights & Judiciary

NOT ADOPTED 03/03/2022

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

3 **"Sec. 1.** RCW 10.77.010 and 2021 c 263 s 9 are each reenacted and
4 amended to read as follows:

5 As used in this chapter:

6 (1) "Admission" means acceptance based on medical necessity, of a
7 person as a patient.

8 (2) "Commitment" means the determination by a court that a person
9 should be detained for a period of either evaluation or treatment, or
10 both, in an inpatient or a less-restrictive setting.

11 (3) "Community behavioral health agency" has the same meaning as
12 "licensed or certified behavioral health agency" defined in RCW
13 71.24.025.

14 (4) "Conditional release" means modification of a court-ordered
15 commitment, which may be revoked upon violation of any of its terms.

16 (5) A "criminally insane" person means any person who has been
17 acquitted of a crime charged by reason of insanity, and thereupon
18 found to be a substantial danger to other persons or to present a
19 substantial likelihood of committing criminal acts jeopardizing
20 public safety or security unless kept under further control by the
21 court or other persons or institutions.

22 (6) "Department" means the state department of social and health
23 services.

24 (7) "Designated crisis responder" has the same meaning as
25 provided in RCW 71.05.020.

26 (8) "Detention" or "detain" means the lawful confinement of a
27 person, under the provisions of this chapter, pending evaluation.

28 (9) "Developmental disabilities professional" means a person who
29 has specialized training and three years of experience in directly
30 treating or working with persons with developmental disabilities and
31 is a psychiatrist or psychologist, or a social worker, and such other

1 developmental disabilities professionals as may be defined by rules
2 adopted by the secretary.

3 (10) "Developmental disability" means the condition as defined in
4 RCW 71A.10.020(5).

5 (11) "Discharge" means the termination of hospital medical
6 authority. The commitment may remain in place, be terminated, or be
7 amended by court order.

8 (12) "Furlough" means an authorized leave of absence for a
9 resident of a state institution operated by the department designated
10 for the custody, care, and treatment of the criminally insane,
11 consistent with an order of conditional release from the court under
12 this chapter, without any requirement that the resident be
13 accompanied by, or be in the custody of, any law enforcement or
14 institutional staff, while on such unescorted leave.

15 (13) "Habilitative services" means those services provided by
16 program personnel to assist persons in acquiring and maintaining life
17 skills and in raising their levels of physical, mental, social, and
18 vocational functioning. Habilitative services include education,
19 training for employment, and therapy. The habilitative process shall
20 be undertaken with recognition of the risk to the public safety
21 presented by the person being assisted as manifested by prior charged
22 criminal conduct.

23 (14) "History of one or more violent acts" means violent acts
24 committed during: (a) The ten-year period of time prior to the filing
25 of criminal charges; plus (b) the amount of time equal to time spent
26 during the ten-year period in a mental health facility or in
27 confinement as a result of a criminal conviction.

28 (15) "Immediate family member" means a spouse, child, stepchild,
29 parent, stepparent, grandparent, sibling, or domestic partner.

30 (16) "Incompetency" means a person lacks the capacity to
31 understand the nature of the proceedings against him or her or to
32 assist in his or her own defense as a result of mental disease or
33 defect.

34 (17) "Indigent" means any person who is financially unable to
35 obtain counsel or other necessary expert or professional services
36 without causing substantial hardship to the person or his or her
37 family.

38 (18) "Individualized service plan" means a plan prepared by a
39 developmental disabilities professional with other professionals as a

1 team, for an individual with developmental disabilities, which shall
2 state:

3 (a) The nature of the person's specific problems, prior charged
4 criminal behavior, and habilitation needs;

5 (b) The conditions and strategies necessary to achieve the
6 purposes of habilitation;

7 (c) The intermediate and long-range goals of the habilitation
8 program, with a projected timetable for the attainment;

9 (d) The rationale for using this plan of habilitation to achieve
10 those intermediate and long-range goals;

11 (e) The staff responsible for carrying out the plan;

12 (f) Where relevant in light of past criminal behavior and due
13 consideration for public safety, the criteria for proposed movement
14 to less-restrictive settings, criteria for proposed eventual release,
15 and a projected possible date for release; and

16 (g) The type of residence immediately anticipated for the person
17 and possible future types of residences.

18 (19) "Professional person" means:

19 (a) A psychiatrist licensed as a physician and surgeon in this
20 state who has, in addition, completed three years of graduate
21 training in psychiatry in a program approved by the American medical
22 association or the American osteopathic association and is certified
23 or eligible to be certified by the American board of psychiatry and
24 neurology or the American osteopathic board of neurology and
25 psychiatry;

26 (b) A psychologist licensed as a psychologist pursuant to chapter
27 18.83 RCW; (~~(e)~~)

28 (c) A psychiatric advanced registered nurse practitioner, as
29 defined in RCW 71.05.020; or

30 (d) A social worker with a master's or further advanced degree
31 from a social work educational program accredited and approved as
32 provided in RCW 18.320.010.

33 (20) "Release" means legal termination of the court-ordered
34 commitment under the provisions of this chapter.

35 (21) "Secretary" means the secretary of the department of social
36 and health services or his or her designee.

37 (22) "Treatment" means any currently standardized medical or
38 mental health procedure including medication.

39 (23) "Treatment records" include registration and all other
40 records concerning persons who are receiving or who at any time have

1 received services for mental illness, which are maintained by the
2 department, by behavioral health administrative services
3 organizations and their staffs, by managed care organizations and
4 their staffs, and by treatment facilities. Treatment records do not
5 include notes or records maintained for personal use by a person
6 providing treatment services for the department, behavioral health
7 administrative services organizations, managed care organizations, or
8 a treatment facility if the notes or records are not available to
9 others.

10 (24) "Violent act" means behavior that: (a) (i) Resulted in; (ii)
11 if completed as intended would have resulted in; or (iii) was
12 threatened to be carried out by a person who had the intent and
13 opportunity to carry out the threat and would have resulted in,
14 homicide, nonfatal injuries, or substantial damage to property; or
15 (b) recklessly creates an immediate risk of serious physical injury
16 to another person. As used in this subsection, "nonfatal injuries"
17 means physical pain or injury, illness, or an impairment of physical
18 condition. "Nonfatal injuries" shall be construed to be consistent
19 with the definition of "bodily injury," as defined in RCW 9A.04.110.

20 (25) "Authority" means the Washington state health care
21 authority.

22 **Sec. 2.** RCW 10.77.060 and 2021 c 263 s 5 are each amended to
23 read as follows:

24 (1) (a) Whenever a defendant has pleaded not guilty by reason of
25 insanity, or there is reason to doubt his or her competency, the
26 court on its own motion or on the motion of any party shall either
27 appoint or request the secretary to designate a qualified expert or
28 professional person, who shall be approved by the prosecuting
29 attorney, to evaluate and report upon the mental condition of the
30 defendant.

31 (b) The signed order of the court shall serve as authority for
32 the evaluator to be given access to all records held by any mental
33 health, medical, educational, or correctional facility that relate to
34 the present or past mental, emotional, or physical condition of the
35 defendant. If the court is advised by any party that the defendant
36 may have a developmental disability, the evaluation must be performed
37 by a developmental disabilities professional and the evaluator shall
38 have access to records of the developmental disabilities
39 administration of the department.

1 (c) The evaluator shall assess the defendant in a jail, detention
2 facility, in the community, or in court to determine whether a period
3 of inpatient commitment will be necessary to complete an accurate
4 evaluation. If inpatient commitment is needed, the signed order of
5 the court shall serve as authority for the evaluator to request the
6 jail or detention facility to transport the defendant to a hospital
7 or secure mental health facility for a period of commitment not to
8 exceed fifteen days from the time of admission to the facility.
9 Otherwise, the evaluator shall complete the evaluation.

10 (d) The court may commit the defendant for evaluation to a
11 hospital or secure mental health facility without an assessment if:
12 (i) The defendant is charged with murder in the first or second
13 degree; (ii) the court finds that it is more likely than not that an
14 evaluation in the jail will be inadequate to complete an accurate
15 evaluation; or (iii) the court finds that an evaluation outside the
16 jail setting is necessary for the health, safety, or welfare of the
17 defendant. The court shall not order an initial inpatient evaluation
18 for any purpose other than a competency evaluation.

19 (e) The order shall indicate whether, in the event the defendant
20 is committed to a hospital or secure mental health facility for
21 evaluation, all parties agree to waive the presence of the defendant
22 or to the defendant's remote participation at a subsequent competency
23 hearing or presentation of an agreed order if the recommendation of
24 the evaluator is for continuation of the stay of criminal
25 proceedings, or if the opinion of the evaluator is that the defendant
26 remains incompetent and there is no remaining restoration period, and
27 the hearing is held prior to the expiration of the authorized
28 commitment period.

29 (f) When a defendant is ordered to be evaluated under this
30 subsection (1), or when a party or the court determines at first
31 appearance that an order for evaluation under this subsection will be
32 requested or ordered if charges are pursued, the court may delay
33 granting bail until the defendant has been evaluated for competency
34 or sanity and appears before the court. Following the evaluation, in
35 determining bail the court shall consider: (i) Recommendations of the
36 evaluator regarding the defendant's competency, sanity, or diminished
37 capacity; (ii) whether the defendant has a recent history of one or
38 more violent acts; (iii) whether the defendant has previously been
39 acquitted by reason of insanity or found incompetent; (iv) whether it
40 is reasonably likely the defendant will fail to appear for a future

1 court hearing; and (v) whether the defendant is a threat to public
2 safety.

3 (2) The court may direct that a qualified expert or professional
4 person retained by or appointed for the defendant be permitted to
5 witness the evaluation authorized by subsection (1) of this section,
6 and that the defendant shall have access to all information obtained
7 by the court appointed experts or professional persons. The
8 defendant's expert or professional person shall have the right to
9 file his or her own report following the guidelines of subsection (3)
10 of this section. If the defendant is indigent, the court shall upon
11 the request of the defendant assist him or her in obtaining an expert
12 or professional person.

13 (3) The report of the evaluation shall include the following:

14 (a) A description of the nature of the evaluation;

15 (b) A diagnosis or description of the current mental status of
16 the defendant;

17 (c) If the defendant suffers from a mental disease or defect, or
18 has a developmental disability, an opinion as to competency;

19 (d) If the defendant has indicated his or her intention to rely
20 on the defense of insanity pursuant to RCW 10.77.030, and an
21 evaluation and report by an expert or professional person has been
22 provided concluding that the defendant was criminally insane at the
23 time of the alleged offense, an opinion as to the defendant's sanity
24 at the time of the act, and an opinion as to whether the defendant
25 presents a substantial danger to other persons, or presents a
26 substantial likelihood of committing criminal acts jeopardizing
27 public safety or security, unless kept under further control by the
28 court or other persons or institutions, provided that no opinion
29 shall be rendered under this subsection (3)(d) unless the evaluator
30 or court determines that the defendant is competent to stand trial;

31 (e) When directed by the court, if an evaluation and report by an
32 expert or professional person has been provided concluding that the
33 defendant lacked the capacity at the time of the offense to form the
34 mental state necessary to commit the charged offense, an opinion as
35 to the capacity of the defendant to have a particular state of mind
36 which is an element of the offense charged;

37 (f) An opinion as to whether the defendant should be evaluated by
38 a designated crisis responder under chapter 71.05 RCW.

1 (4) The secretary may execute such agreements as appropriate and
2 necessary to implement this section and may choose to designate more
3 than one evaluator.

4 **Sec. 3.** RCW 10.77.068 and 2015 c 5 s 1 are each amended to read
5 as follows:

6 (1) (a) The legislature establishes ~~((the following))~~ a
7 performance ~~((targets and maximum time limits for the timeliness of
8 the completion of accurate and reliable evaluations of competency to
9 stand trial and admissions for inpatient restoration services related
10 to competency to proceed or stand trial for adult criminal
11 defendants))~~ target of seven days or fewer for the following services
12 related to competency to stand trial, when access to the services is
13 legally authorized:

14 (i) To extend an offer of admission to a defendant in pretrial
15 custody for inpatient competency evaluation or inpatient competency
16 restoration services;

17 (ii) To extend an offer of admission to a defendant ordered to be
18 committed to a state hospital following dismissal of charges based on
19 incompetency to stand trial under RCW 10.77.086; and

20 (iii) To complete a competency evaluation in jail and distribute
21 the evaluation report.

22 (b) The legislature establishes a performance target of 21 days
23 or fewer to complete a competency evaluation in the community and
24 distribute the evaluation report.

25 (2) A maximum time limit of 14 days is established to complete
26 the services specified in subsection (1) (a) of this section, subject
27 to the limitations under subsection (9) of this section.

28 (3) The legislature recognizes that these targets may not be
29 achievable in all cases ~~((without compromise to the quality of~~
30 competency evaluation and restoration services)), but intends for the
31 department to manage, allocate, and request appropriations for
32 resources in order to meet these targets whenever possible without
33 sacrificing the accuracy and quality of competency ~~((evaluations and~~
34 restorations, and to otherwise make sustainable improvements and
35 track performance related to the timeliness of competency services:

36 (i) For a state hospital to extend an offer of admission to a
37 defendant in pretrial custody for legally authorized evaluation
38 services related to competency, or to extend an offer of admission

1 ~~for legally authorized services following dismissal of charges based~~
2 ~~on incompetence to proceed or stand trial:~~

3 ~~(A) A performance target of seven days or less; and~~

4 ~~(B) A maximum time limit of fourteen days;~~

5 ~~(ii) For a state hospital to extend an offer of admission to a~~
6 ~~defendant in pretrial custody for legally authorized inpatient~~
7 ~~restoration treatment related to competency:~~

8 ~~(A) A performance target of seven days or less; and~~

9 ~~(B) A maximum time limit of fourteen days;~~

10 ~~(iii) For completion of a competency evaluation in jail and~~
11 ~~distribution of the evaluation report for a defendant in pretrial~~
12 ~~custody:~~

13 ~~(A) A performance target of seven days or less; and~~

14 ~~(B) A maximum time limit of fourteen days, plus an additional~~
15 ~~seven-day extension if needed for clinical reasons to complete the~~
16 ~~evaluation at the determination of the department;~~

17 ~~(iv) For completion of a competency evaluation in the community~~
18 ~~and distribution of the evaluation report for a defendant who is~~
19 ~~released from custody and makes a reasonable effort to cooperate with~~
20 ~~the evaluation, a performance target of twenty-one days or less))~~
21 services.

22 ~~((b))~~ The time periods measured in ~~((these performance targets~~
23 ~~and maximum time limits))~~ subsection (1) of this section shall run
24 from the date on which the state hospital receives the court referral
25 and charging documents, discovery, police reports, the names and
26 addresses of the attorneys for the defendant and state or county, the
27 name of the judge ordering the evaluation, information about the
28 alleged crime, and criminal history information related to the
29 defendant. ~~((The maximum time limits in (a) of this subsection shall~~
30 ~~be phased in over a one-year period beginning July 1, 2015, in a~~
31 ~~manner that results in measurable incremental progress toward meeting~~
32 ~~the time limits over the course of the year.~~

33 ~~(e))~~ (4) It shall be a defense to an allegation that the
34 department has exceeded the maximum time limits for completion of
35 competency services described in ~~((a) of this))~~ subsection (2) of
36 this section if the department can demonstrate by a preponderance of
37 the evidence that the reason for exceeding the maximum time limits
38 was outside of the department's control including, but not limited
39 to, the following circumstances:

1 ~~((i))~~ (a) Despite a timely request, the department has not
2 received necessary medical ~~((clearance))~~ information regarding the
3 current medical status of a defendant ~~((in pretrial custody for the
4 purposes of admission to a state hospital))~~;

5 ~~((ii))~~ (b) The individual circumstances of the defendant make
6 accurate completion of an evaluation of competency to ~~((proceed or))~~
7 stand trial dependent upon review of mental health, substance use
8 disorder, or medical history information which is in the custody of a
9 third party and cannot be immediately obtained by the department~~((-~~
10 ~~Completion of a competency evaluation))~~, provided that completion
11 shall not be postponed for procurement of ((mental health, substance
12 use disorder, or medical history)) information which is merely
13 supplementary ((to the competency determination));

14 ~~((iii))~~ (c) Additional time is needed for the defendant to no
15 longer show active signs and symptoms of impairment related to
16 substance use so that an accurate evaluation may be completed;

17 (d) The defendant is medically unavailable for competency
18 evaluation or admission to a facility for competency restoration;

19 (e) Completion of the referral ((is frustrated by lack of))
20 requires additional time to accommodate the availability or
21 participation ((by)) of counsel, ((jail or)) court personnel,
22 interpreters, or the defendant;

23 ~~((iv) The department does not have access to appropriate private~~
24 ~~space to conduct a competency evaluation for a defendant in pretrial~~
25 ~~custody;~~

26 ~~((v))~~ (f) The defendant asserts legal rights that result in a
27 delay in the provision of competency services; or

28 ~~((vi))~~ (g) An unusual spike in the receipt of evaluation
29 referrals or in the number of defendants requiring restoration
30 services has occurred, causing temporary delays until the unexpected
31 excess demand for competency services can be resolved.

32 ~~((2))~~ (5) The department shall provide written notice to the
33 court when it will not be able to meet the maximum time limits under
34 subsection (2) of this section and identify the reasons for the delay
35 and provide a reasonable estimate of the time necessary to complete
36 the competency service. Good cause for an extension for the
37 additional time estimated by the department shall be presumed absent
38 a written response from the court or a party received by the
39 department within seven days.

40 (6) The department shall:

1 (a) Develop, document, and implement procedures to monitor the
2 clinical status of defendants admitted to a state hospital for
3 competency services that allow the state hospital to accomplish early
4 discharge for defendants for whom clinical objectives have been
5 achieved or may be achieved before expiration of the commitment
6 period;

7 (b) Investigate the extent to which patients admitted to a state
8 hospital under this chapter overstay time periods authorized by law
9 and take reasonable steps to limit the time of commitment to
10 authorized periods; and

11 (c) Establish written standards for the productivity of forensic
12 evaluators and utilize these standards to internally review the
13 performance of forensic evaluators.

14 ~~((3))~~ (7) Following any quarter in which a state hospital has
15 failed to meet one or more of the performance targets or maximum time
16 limits ~~((in))~~ under subsection (1) or (2) of this section ~~((after~~
17 ~~full implementation of the performance target or maximum time~~
18 ~~limit))~~, the department shall report to the executive and the
19 legislature the extent of this deviation and describe any corrective
20 action being taken to improve performance. This report ~~((must))~~ shall
21 be made publicly available. An average may be used to determine
22 timeliness under this subsection.

23 ~~((4) Beginning December 1, 2013, the))~~ (8) The department shall
24 report annually to the legislature and the executive on the
25 timeliness of services related to competency to ~~((proceed or))~~ stand
26 trial and the timeliness with which court referrals accompanied by
27 charging documents, discovery, and criminal history information are
28 provided to the department relative to the signature date of the
29 court order. The report must be in a form that is accessible to the
30 public and that breaks down performance by county.

31 ~~((5))~~ (9) This section does not create any new entitlement or
32 cause of action related to the timeliness of competency ~~((evaluations~~
33 ~~or admission for inpatient restoration))~~ to stand trial services
34 ~~((related to competency to proceed or stand trial))~~, nor can it form
35 the basis for contempt sanctions under chapter 7.21 RCW or a motion
36 to dismiss criminal charges.

37 **Sec. 4.** RCW 10.77.086 and 2019 c 326 s 4 are each amended to
38 read as follows:

1 (1) ~~((a)-(i))~~ If the defendant is charged with a felony and
2 determined to be incompetent, until he or she has regained the
3 competency necessary to understand the proceedings against him or her
4 and assist in his or her own defense, but in any event for a period
5 of no longer than ~~((ninety))~~ 90 days, the court shall commit the
6 defendant to the custody of the secretary for inpatient competency
7 restoration ~~((Based))~~, or may alternatively order the defendant to
8 receive outpatient competency restoration based on a recommendation
9 from a forensic navigator and input from the parties ~~((, the court may~~
10 ~~order the defendant to receive inpatient competency restoration or~~
11 ~~outpatient competency restoration))~~.

12 ~~((A))~~ (a) To be eligible for an order for outpatient competency
13 restoration, a defendant must be clinically appropriate and be
14 willing to:

15 ~~((I))~~ (i) Adhere to medications or receive prescribed
16 intramuscular medication; ~~((and~~

17 ~~(II))~~ (ii) Abstain from alcohol and unprescribed drugs; and

18 (iii) Comply with urinalysis or breathalyzer monitoring if
19 needed.

20 ~~((B))~~ (b) If the court orders inpatient competency restoration,
21 the department shall place the defendant in an appropriate facility
22 of the department for competency restoration.

23 ~~((C))~~ (c) If the court orders outpatient competency
24 restoration, the court shall modify conditions of release as needed
25 to authorize the department to place the person in approved housing,
26 which may include access to supported housing, affiliated with a
27 contracted outpatient competency restoration program. The department,
28 in conjunction with the health care authority, must establish rules
29 for conditions of participation in the outpatient competency
30 restoration program, which must include the defendant being subject
31 to medication management ~~((and))~~. The court may order regular
32 urinalysis testing ~~((for defendants who have a current substance use~~
33 ~~disorder diagnosis))~~. The outpatient competency restoration program
34 shall monitor the defendant during the defendant's placement in the
35 program and report any noncompliance or significant changes with
36 respect to the defendant to the department and, if applicable, the
37 forensic navigator.

38 ~~((D))~~ (d) If a defendant fails to comply with the restrictions
39 of the outpatient restoration program such that restoration is no
40 longer appropriate in that setting or the defendant is no longer

1 clinically appropriate for outpatient competency restoration, the
2 (~~department shall remove the defendant from the outpatient~~
3 ~~restoration program and place the defendant instead~~) director of the
4 outpatient competency restoration program shall notify the authority
5 and the department of the need to terminate the outpatient competency
6 restoration program and intent to request placement for the defendant
7 in an appropriate facility of the department for inpatient competency
8 restoration (~~for no longer than the time allowed as if the defendant~~
9 ~~had been initially placed into inpatient competency restoration, in~~
10 ~~addition to reasonable time for transport to or from the facility~~)).
11 The outpatient competency restoration program shall coordinate with
12 the authority, the department, and any law enforcement personnel
13 under (d)(i) of this subsection to ensure that the time period
14 between termination and admission into the inpatient facility is as
15 minimal as possible. The time period for inpatient competency
16 restoration shall be the same as if the outpatient competency
17 restoration had not occurred, starting from admission to the
18 facility. The department shall obtain a placement for the defendant
19 within seven days of the notice of intent to terminate the outpatient
20 competency restoration program.

21 (i) The department may authorize a peace officer to detain the
22 defendant into emergency custody for transport to a crisis
23 stabilization unit, evaluation and treatment facility, emergency
24 department of a local hospital, or triage facility for medical
25 clearance, and may authorize the peace officer to detain the
26 defendant for transport to the designated inpatient competency
27 restoration facility. The signed outpatient competency restoration
28 order of the court shall serve as authority for the detention of the
29 defendant under this subsection. This subsection does not preclude
30 voluntary transportation of the defendant to a facility for medical
31 clearance or inpatient competency restoration, or authorize admission
32 of the defendant into jail.

33 (ii) The department shall notify the court and parties of the
34 (~~change in placement~~) defendant's admission for inpatient
35 competency restoration before the close of the next judicial day. The
36 court shall schedule a hearing within five days to review the
37 (~~placement and~~) conditions of release of the defendant and
38 anticipated release from treatment and issue appropriate orders.
39 (~~The standard of proof shall be a preponderance of the evidence, and~~

1 ~~the court may in its discretion render its decision based on written~~
2 ~~submissions, live testimony, or remote testimony.~~

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

9 ~~((ii) The ninety day period for competency restoration under~~
10 ~~this subsection (1) includes only the time the defendant is actually~~
11 ~~at the facility and is in addition to reasonable time for transport~~
12 ~~to or from the facility.~~

13 ~~(b))~~ (2) For a defendant whose highest charge is a class C
14 felony, or a class B felony that is not classified as violent under
15 RCW 9.94A.030, the maximum time allowed for the initial felony
16 competency restoration period ~~((of commitment for competency~~
17 ~~restoration))~~ is ~~((forty-five))~~ 45 days. ~~((The forty-five day period~~
18 ~~includes only the time the defendant is actually at the facility and~~
19 ~~is in addition to reasonable time for transport to or from the~~
20 ~~facility.~~

21 ~~(e))~~ (3) If the court determines or the parties agree before the
22 initial felony competency restoration period or at any subsequent
23 stage of the proceedings that the defendant is unlikely to regain
24 competency, the court may dismiss the charges without prejudice
25 without ordering the defendant to undergo an initial or further
26 period of competency restoration treatment, in which case the court
27 shall order that the defendant be referred for evaluation for civil
28 commitment in the manner provided in subsection ~~((4))~~ (5) of this
29 section.

30 ~~((2))~~ (4) On or before expiration of the initial felony
31 competency restoration period ~~((of commitment under subsection (1) of~~
32 ~~this section))~~ the court shall conduct a hearing ~~((, at which it~~
33 ~~shall))~~ to determine whether ~~((or not))~~ the defendant is
34 ~~((incompetent. (3))~~ now competent to stand trial. If the court finds
35 by a preponderance of the evidence that ~~((a))~~ the defendant ~~((charged~~
36 ~~with a felony))~~ is incompetent to stand trial, the court ~~((shall have~~
37 ~~the option of extending the))~~ may order ~~((of commitment or~~
38 ~~alternative treatment))~~ an extension of the competency restoration
39 period for an additional period of ~~((ninety))~~ 90 days, but the court
40 must at the same time ~~((of extension))~~ set a date for a ~~((prompt))~~

1 new hearing to determine the defendant's competency to stand trial
2 before the expiration of ~~((the))~~ this second restoration period. The
3 defendant, the defendant's attorney, ~~((or))~~ and the prosecutor
4 ~~((has))~~ have the right to demand that the hearing be before a jury.
5 No extension shall be ordered for a second or third felony competency
6 restoration period ~~((as provided in subsection (4) of this section))~~
7 if the defendant's incompetence has been determined by the secretary
8 to be solely the result of a developmental disability which is such
9 that competence is not reasonably likely to be regained during an
10 extension. ~~((The ninety-day period includes only the time the~~
11 ~~defendant is actually at the facility and is in addition to~~
12 ~~reasonable time for transport to or from the facility.~~

13 ~~(4) For persons charged with a felony, at))~~

14 (5) At the hearing upon the expiration of the second felony
15 competency restoration period, or at the end of the first felony
16 competency restoration period ~~((in the case of a))~~ if the defendant
17 ~~((with a developmental disability))~~ is ineligible for a second or
18 third competency restoration period under subsection (4) of this
19 section, if the jury or court finds that the defendant is
20 incompetent ~~((, or if the court or jury at any stage finds that the~~
21 ~~defendant is incompetent and the court determines that the defendant~~
22 ~~is unlikely to regain competency, the charges shall be dismissed))~~ to
23 stand trial, the court shall dismiss the charges without
24 prejudice ~~((,))~~ and ~~((the court shall))~~ order the defendant to be
25 committed to a state hospital ~~((as defined in RCW 72.23.010))~~ for up
26 to ~~((seventy-two))~~ 120 hours if the defendant has not undergone
27 competency restoration services and up to 72 hours if the defendant
28 engaged in competency restoration services starting from admission to
29 the facility, excluding Saturdays, Sundays, and holidays, for
30 evaluation for the purpose of filing a civil commitment petition
31 under chapter 71.05 RCW. ~~((The criminal charges))~~ However, the court
32 shall not ~~((be dismissed))~~ dismiss the charges if the court or jury
33 finds that: (a) The defendant (i) is a substantial danger to other
34 persons; or (ii) presents a substantial likelihood of committing
35 criminal acts jeopardizing public safety or security; and (b) there
36 is a substantial probability that the defendant will regain
37 competency within a reasonable period of time. ~~((In the event that))~~
38 If the court or jury makes such a finding, the court may extend the
39 period of commitment for up to an additional six months. ~~((The six-~~
40 ~~month))~~

1 (6) Any period of competency restoration treatment under this
2 section includes only the time the defendant is actually at the
3 facility and is in addition to reasonable time for transport to or
4 from the facility.

5 **Sec. 5.** RCW 10.77.088 and 2020 c 18 s 4 are each amended to read
6 as follows:

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

10 (a) Shall dismiss the proceedings without prejudice and detain
11 the defendant for sufficient time to allow the designated crisis
12 responder to evaluate the defendant and consider initial detention
13 proceedings under chapter 71.05 RCW, unless the prosecutor objects to
14 the dismissal and provides notice of a motion for an order for
15 nonfelony competency restoration treatment, in which case the court
16 shall schedule a hearing within seven days (~~(to determine whether to~~
17 ~~enter an order of competency restoration)~~).

18 (b) At the hearing, the prosecuting attorney must establish that
19 there is a compelling state interest to order nonfelony competency
20 restoration treatment for the defendant. The court may consider prior
21 criminal history, prior history in treatment, prior history of
22 violence, the quality and severity of the pending charges, any
23 history that suggests whether (~~(or not)~~) nonfelony competency
24 restoration treatment is likely to be successful, in addition to the
25 factors listed under RCW 10.77.092. If the prosecuting attorney
26 proves by a preponderance of the evidence that there is a compelling
27 state interest in ordering nonfelony competency restoration
28 treatment, then the court shall issue an order (~~(competency~~
29 ~~restoration)~~) in accordance with subsection (2)(~~(a)~~) of this
30 section.

31 (2)(~~(a)~~) If a court finds pursuant to subsection (1)(b) of this
32 section that there is a compelling state interest in pursuing
33 nonfelony competency restoration treatment, (~~(then)~~) the court shall
34 commit the defendant to the custody of the secretary for inpatient
35 competency restoration(~~(. Based)~~), or may alternatively order the
36 defendant to receive outpatient competency restoration based on a
37 recommendation from a forensic navigator and input from the
38 parties(~~(, the court may order the defendant to receive inpatient~~
39 ~~competency restoration or outpatient competency restoration)~~).

1 ~~((i))~~ (a) To be eligible for an order for outpatient competency
2 restoration, a defendant must be clinically appropriate and be
3 willing to:

4 ~~((A))~~ (i) Adhere to medications or receive prescribed
5 intramuscular medication; ~~(and~~

6 ~~(B))~~ (ii) Abstain from alcohol and unprescribed drugs; and
7 (iii) Comply with urinalysis or breathalyzer monitoring if
8 needed.

9 ~~((ii))~~ (b) If the court orders inpatient competency
10 restoration, the department shall place the defendant in an
11 appropriate facility of the department for competency restoration
12 under ~~((b))~~ subsection (3) of this ~~((subsection))~~ section.

13 ~~((iii))~~ (c) If the court orders outpatient competency
14 restoration, the court shall modify conditions of release as needed
15 to authorize the department to place the person in approved housing,
16 which may include access to supported housing, affiliated with a
17 contracted outpatient competency restoration program. The department,
18 in conjunction with the health care authority, must establish rules
19 for conditions of participation in the outpatient competency
20 restoration program, which must include the defendant being subject
21 to medication management ~~((and))~~. The court may order regular
22 urinalysis testing ~~((for defendants who have a current substance use~~
23 ~~disorder diagnosis))~~. The outpatient competency restoration program
24 shall monitor the defendant during the defendant's placement in the
25 program and report any noncompliance or significant changes with
26 respect to the defendant to the department and, if applicable, the
27 forensic navigator.

28 ~~((iv))~~ (d) If a defendant fails to comply with the restrictions
29 of the outpatient competency restoration program such that
30 restoration is no longer appropriate in that setting or the defendant
31 is no longer clinically appropriate for outpatient competency
32 restoration, the ~~((department shall remove the defendant from the~~
33 ~~outpatient restoration program. The department shall place the~~
34 ~~defendant instead))~~ director of the outpatient competency restoration
35 program shall notify the authority and the department of the need to
36 terminate the outpatient competency restoration program and intent to
37 request placement for the defendant in an appropriate facility of the
38 department for inpatient competency restoration ~~((for no longer than~~
39 ~~twenty-nine days regardless of any time spent in outpatient~~
40 ~~competency restoration, in addition to reasonable time for transport~~

1 ~~to or from the facility~~). The outpatient competency restoration
2 program shall coordinate with the authority, the department, and any
3 law enforcement personnel under (d)(i) of this subsection to ensure
4 that the time period between termination and admission into the
5 inpatient facility is as minimal as possible. The time period for
6 inpatient competency restoration shall be the same as if the
7 outpatient competency restoration had not occurred, starting from
8 admission to the facility. The department shall obtain a placement
9 for the defendant within seven days of the notice of intent to
10 terminate of the outpatient competency restoration program.

11 (i) The department may authorize a peace officer to detain the
12 defendant into emergency custody for transport to a crisis
13 stabilization unit, evaluation and treatment facility, emergency
14 department of a local hospital, or triage facility for medical
15 clearance, and may authorize the peace officer to detain the
16 defendant for transport to the designated inpatient competency
17 restoration facility. The signed outpatient competency restoration
18 order of the court shall serve as authority for the detention of the
19 defendant under this subsection. This subsection does not preclude
20 voluntary transportation of the defendant to a facility for medical
21 clearance or inpatient competency restoration, or authorize admission
22 of the defendant into jail.

23 (ii) The department shall notify the court and parties of the
24 (change in placement) defendant's admission for inpatient
25 competency restoration before the close of the next judicial day. The
26 court shall schedule a hearing within five days to review the
27 (placement and) conditions of release of the defendant and
28 anticipated release from treatment and issue appropriate orders.
29 (The standard of proof shall be a preponderance of the evidence, and
30 the court may in its discretion render its decision based on written
31 submissions, live testimony, or remote testimony.

32 ~~(v))~~ (e) The court may not issue an order for outpatient
33 competency restoration unless the department certifies that there is
34 an available appropriate outpatient restoration program that has
35 adequate space for the person at the time the order is issued or the
36 court places the defendant under the guidance and control of a
37 professional person identified in the court order.

38 ~~((b))~~ (3) The placement under ((a)) subsection (2) of this
39 (subsection) section shall not exceed ((twenty-nine)) 29 days if
40 the defendant is ordered to receive inpatient competency restoration,

1 (~~(e)~~) and shall not exceed (~~(ninety)~~) 90 days if the defendant is
2 ordered to receive outpatient competency restoration. The court may
3 order any combination of this subsection(~~(, not to exceed ninety~~
4 ~~days. This period must be considered to include only the time the~~
5 ~~defendant is actually at the facility and shall be in addition to~~
6 ~~reasonable time for transport to or from the facility))~~).

7 (~~(e)~~) (4) If the court has determined or the parties agree that
8 the defendant is unlikely to regain competency, the court may dismiss
9 the charges without prejudice without ordering the defendant to
10 undergo nonfelony competency restoration treatment, in which case the
11 court shall order that the defendant be referred for evaluation for
12 civil commitment in the manner provided in (~~(d)~~) subsection (5) of
13 this (~~(subsection))~~ section.

14 (~~(d)(i)~~) (5)(a) If the proceedings are dismissed under RCW
15 10.77.084 and the defendant was on conditional release at the time of
16 dismissal, the court shall order the designated crisis responder
17 within that county to evaluate the defendant pursuant to chapter
18 71.05 RCW. The evaluation may be conducted in any location chosen by
19 the professional.

20 (~~(ii)~~) (b) If the defendant was in custody and not on
21 conditional release at the time of dismissal, the defendant shall be
22 detained and sent to an evaluation and treatment facility for up to
23 (~~(seventy-two))~~ 120 hours if the defendant has not undergone
24 competency restoration services and up to 72 hours if the defendant
25 engaged in competency restoration services, excluding Saturdays,
26 Sundays, and holidays, for evaluation for purposes of filing a
27 petition under chapter 71.05 RCW. The (~~(seventy-two))~~ 120-hour or 72-
28 hour period shall commence upon the next nonholiday weekday following
29 the court order and shall run to the end of the last nonholiday
30 weekday within the (~~(seventy-two))~~ 120-hour or 72-hour period.

31 (~~(3)~~) (6) If the defendant is charged with a nonfelony crime
32 that is not a serious offense as defined in RCW 10.77.092 and found
33 by the court to be not competent, the court may stay or dismiss
34 proceedings and detain the defendant for sufficient time to allow the
35 designated crisis responder to evaluate the defendant and consider
36 initial detention proceedings under chapter 71.05 RCW. The court must
37 give notice to all parties at least (~~(twenty-four))~~ 24 hours before
38 the dismissal of any proceeding under this subsection, and provide an
39 opportunity for a hearing on whether to dismiss the proceedings.

1 ~~((4))~~ (7) If at any time the court dismisses charges under
2 subsections (1) through ~~((3))~~ (6) of this section, the court shall
3 make a finding as to whether the defendant has a history of one or
4 more violent acts. If the court so finds, the defendant is barred
5 from the possession of firearms until a court restores his or her
6 right to possess a firearm under RCW 9.41.047. The court shall state
7 to the defendant and provide written notice that the defendant is
8 barred from the possession of firearms and that the prohibition
9 remains in effect until a court restores his or her right to possess
10 a firearm under RCW 9.41.047.

11 (8) Any period of competency restoration treatment under this
12 section includes only the time the defendant is actually at the
13 facility and is in addition to reasonable time for transport to or
14 from the facility.

15 **Sec. 6.** RCW 10.77.220 and 2015 1st sp.s. c 7 s 8 are each
16 amended to read as follows:

17 (1) No person who is criminally insane confined pursuant to this
18 chapter shall be incarcerated in a state correctional institution or
19 facility. This section does not apply to confinement in a mental
20 health facility located wholly within a correctional institution.
21 Confinement of a person who is criminally insane in a county jail or
22 other local facility while awaiting either placement in a treatment
23 program or a court hearing pursuant to this chapter is permitted for
24 no more than seven days.

25 (2) In the event that a person remains in jail 21 days after
26 service on the department of a court order to transport the person to
27 a facility designated by the department for inpatient competency
28 restoration treatment, the department shall upon the request of any
29 party perform a competency to stand trial status check at reasonable
30 intervals to determine if the circumstances of the person have
31 changed such that the court should authorize an updated competency
32 evaluation, and provide a status update to the parties and the court.

33 **Sec. 7.** RCW 10.77.250 and 1987 c 75 s 1 are each amended to read
34 as follows:

35 ~~((The))~~ (1) Within amounts appropriated, the department shall be
36 responsible for all costs relating to the evaluation and inpatient
37 treatment of persons committed to it pursuant to any provisions of
38 this chapter, and the logistical and supportive services pertaining

1 thereto except as otherwise provided by law. Reimbursement may be
2 obtained by the department pursuant to RCW 43.20B.330.

3 (2) Within amounts appropriated, the authority shall be
4 responsible for all costs relating to outpatient competency
5 restoration programs.

6 NEW SECTION. Sec. 8. A new section is added to chapter 10.77
7 RCW to read as follows:

8 No officer of a public or private agency, nor the superintendent,
9 professional person in charge, his or her professional designee, or
10 attending staff of any such agency, nor any public official
11 performing functions necessary to the administration of this chapter,
12 nor peace officer responsible for detaining a person pursuant to this
13 chapter, nor the state, a unit of local government, an evaluation and
14 treatment facility, a secure withdrawal management and stabilization
15 facility, or an approved substance use disorder treatment program
16 shall be civilly or criminally liable for performing duties pursuant
17 to this chapter with regard to the decision of whether to detain a
18 person for medical clearance or treatment, provided that such duties
19 were performed in good faith and without gross negligence.

20 NEW SECTION. Sec. 9. A new section is added to chapter 10.77
21 RCW to read as follows:

22 The authority shall report annually to the governor and relevant
23 committees of the legislature, beginning November 1, 2022,
24 describing:

25 (1) How many individuals are being served by outpatient
26 competency restoration programs and in what locations;

27 (2) The length of stay of individuals in outpatient competency
28 restoration programs;

29 (3) The number of individuals who are revoked from an outpatient
30 competency restoration program into inpatient treatment, and the
31 outcomes of other individuals, if any, whose participation in an
32 outpatient competency restoration program were terminated before the
33 completion of the program; and

34 (4) For individuals who were revoked from an outpatient
35 competency restoration program into an inpatient competency
36 restoration program, how many days the individuals spent in
37 outpatient competency restoration treatment and inpatient competency

1 restoration treatment, and whether the restoration programs resulted
2 in a finding of competent to stand trial or another outcome."

3 Correct the title.

EFFECT: Includes psychiatric advanced registered nurse
practitioners in the definition of "professional person."

--- END ---