
SUBSTITUTE SENATE BILL 5210

State of Washington

67th Legislature

2021 Regular Session

By Senate Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Dhingra, Darneille, Kuderer, Nguyen, and Wilson, C.; by request of Department of Social and Health Services)

READ FIRST TIME 02/01/21.

1 AN ACT Relating to updates to competency restoration order
2 requirements; and amending RCW 10.77.086 and 10.77.088.

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

4 **Sec. 1.** RCW 10.77.086 and 2019 c 326 s 4 are each amended to
5 read as follows:

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

17 (A) To be eligible for an order for outpatient competency
18 restoration, a defendant must be clinically appropriate and be
19 willing to:

20 (I) Adhere to medications or receive prescribed intramuscular
21 medication; (~~and~~)

1 (II) Abstain from alcohol and unprescribed drugs; and

2 (III) Comply with urinalysis or breathalyzer monitoring if
3 needed.

4 (B) 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.

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

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

38 (E) The court may not issue an order for outpatient competency
39 restoration unless the department certifies that there is an
40 available appropriate outpatient competency restoration program that

1 has adequate space for the person at the time the order is issued or
2 the court places the defendant under the guidance and control of a
3 professional person identified in the court order.

4 (ii) The (~~ninety~~) 90-day period for competency restoration
5 under this subsection (1) includes only the time the defendant is
6 actually at the facility and is in addition to reasonable time for
7 transport to or from the facility.

8 (b) For a defendant whose highest charge is a class C felony, or
9 a class B felony that is not classified as violent under RCW
10 9.94A.030, the maximum time allowed for the initial period of
11 commitment for competency restoration is (~~forty-five~~) 45 days. The
12 (~~forty-five~~) 45-day period includes only the time the defendant is
13 actually at the facility and is in addition to reasonable time for
14 transport to or from the facility.

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

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

25 (3) If the court finds by a preponderance of the evidence that a
26 defendant charged with a felony is incompetent, the court shall have
27 the option of extending the order of commitment or alternative
28 treatment for an additional period of (~~ninety~~) 90 days, but the
29 court must at the time of extension set a date for a prompt hearing
30 to determine the defendant's competency before the expiration of the
31 second restoration period. The defendant, the defendant's attorney,
32 or the prosecutor has the right to demand that the hearing be before
33 a jury. No extension shall be ordered for a second or third
34 restoration period as provided in subsection (4) of this section if
35 the defendant's incompetence has been determined by the secretary to
36 be solely the result of a developmental disability which is such that
37 competence is not reasonably likely to be regained during an
38 extension. The (~~ninety~~) 90-day period includes only the time the
39 defendant is actually at the facility and is in addition to
40 reasonable time for transport to or from the facility.

1 (4) For persons charged with a felony, at the hearing upon the
2 expiration of the second restoration period or at the end of the
3 first restoration period in the case of a defendant with a
4 developmental disability, if the jury or court finds that the
5 defendant is incompetent, or if the court or jury at any stage finds
6 that the defendant is incompetent and the court determines that the
7 defendant is unlikely to regain competency, the charges shall be
8 dismissed without prejudice, and the court shall order the defendant
9 be committed to a state hospital as defined in RCW 72.23.010 for up
10 to (~~seventy-two~~) 72 hours starting from admission to the facility,
11 excluding Saturdays, Sundays, and holidays, for evaluation for the
12 purpose of filing a civil commitment petition under chapter 71.05
13 RCW. The criminal charges shall not be dismissed if the court or jury
14 finds that: (a) The defendant (i) is a substantial danger to other
15 persons; or (ii) presents a substantial likelihood of committing
16 criminal acts jeopardizing public safety or security; and (b) there
17 is a substantial probability that the defendant will regain
18 competency within a reasonable period of time. In the event that the
19 court or jury makes such a finding, the court may extend the period
20 of commitment for up to an additional six months. The six-month
21 period includes only the time the defendant is actually at the
22 facility and is in addition to reasonable time for transport to or
23 from the facility.

24 **Sec. 2.** RCW 10.77.088 and 2020 c 18 s 4 are each amended to read
25 as follows:

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

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

37 (b) At the hearing, the prosecuting attorney must establish that
38 there is a compelling state interest to order competency restoration
39 treatment for the defendant. The court may consider prior criminal

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

9 (2) (a) If a court finds pursuant to subsection (1) (b) of this
10 section that there is a compelling state interest in pursuing
11 competency restoration treatment, then the court shall commit the
12 defendant to the custody of the secretary for inpatient competency
13 restoration(~~(.Based)~~), or may alternatively order the defendant to
14 receive outpatient competency restoration based on a recommendation
15 from a forensic navigator and input from the parties(~~(, the court may~~
16 ~~order the defendant to receive inpatient competency restoration or~~
17 ~~outpatient competency restoration)~~).

18 (i) To be eligible for an order for outpatient competency
19 restoration, a defendant must be clinically appropriate and be
20 willing to:

21 (A) Adhere to medications or receive prescribed intramuscular
22 medication; (~~and~~)

23 (B) Abstain from alcohol and unprescribed drugs; and

24 (C) Comply with urinalysis or breathalyzer monitoring if needed.

25 (ii) If the court orders inpatient competency restoration, the
26 department shall place the defendant in an appropriate facility of
27 the department for competency restoration under (b) of this
28 subsection.

29 (iii) If the court orders outpatient competency restoration, the
30 court shall modify conditions of release as needed to authorize the
31 department to place the person in approved housing, which may include
32 access to supported housing, affiliated with a contracted outpatient
33 competency restoration program. The department, in conjunction with
34 the health care authority, must establish rules for conditions of
35 participation in the outpatient competency restoration program, which
36 must include the defendant being subject to medication management and
37 regular urinalysis testing for defendants who have a current
38 substance use disorder diagnosis. The outpatient competency
39 restoration program shall monitor the defendant during the
40 defendant's placement in the program and report any noncompliance or

1 significant changes with respect to the defendant to the department
2 and, if applicable, the forensic navigator.

3 (iv) If a defendant fails to comply with the restrictions of the
4 outpatient competency restoration program such that restoration is no
5 longer appropriate in that setting or the defendant is no longer
6 clinically appropriate for outpatient competency restoration, the
7 department shall remove the defendant from the outpatient restoration
8 program. The department shall place the defendant instead in an
9 appropriate facility of the department for inpatient competency
10 restoration for no longer than (~~twenty-nine~~) 29 days regardless of
11 any time spent in outpatient competency restoration, in addition to
12 reasonable time for transport to or from the facility. The department
13 shall notify the court and parties of the change in placement before
14 the close of the next judicial day. The court shall schedule a
15 hearing within five days to review the placement and conditions of
16 release of the defendant and issue appropriate orders. The standard
17 of proof shall be a preponderance of the evidence, and the court may
18 in its discretion render its decision based on written submissions,
19 live testimony, or remote testimony.

20 (v) The court may not issue an order for outpatient competency
21 restoration unless the department certifies that there is an
22 available appropriate outpatient restoration program that has
23 adequate space for the person at the time the order is issued or the
24 court places the defendant under the guidance and control of a
25 professional person identified in the court order.

26 (b) The placement under (a) of this subsection shall not exceed
27 (~~twenty-nine~~) 29 days if the defendant is ordered to receive
28 inpatient competency restoration, or shall not exceed (~~ninety~~) 90
29 days if the defendant is ordered to receive outpatient competency
30 restoration. The court may order any combination of this subsection,
31 not to exceed (~~ninety~~) 90 days. This period must be considered to
32 include only the time the defendant is actually at the facility and
33 shall be in addition to reasonable time for transport to or from the
34 facility.

35 (c) If the court has determined or the parties agree that the
36 defendant is unlikely to regain competency, the court may dismiss the
37 charges without prejudice without ordering the defendant to undergo
38 restoration treatment, in which case the court shall order that the
39 defendant be referred for evaluation for civil commitment in the
40 manner provided in (d) of this subsection.

1 (d)(i) If the proceedings are dismissed under RCW 10.77.084 and
2 the defendant was on conditional release at the time of dismissal,
3 the court shall order the designated crisis responder within that
4 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
5 evaluation may be conducted in any location chosen by the
6 professional.

7 (ii) If the defendant was in custody and not on conditional
8 release at the time of dismissal, the defendant shall be detained and
9 sent to an evaluation and treatment facility for up to (~~seventy-~~
10 ~~two~~) 72 hours, excluding Saturdays, Sundays, and holidays, for
11 evaluation for purposes of filing a petition under chapter 71.05 RCW.
12 The (~~seventy-two~~) 72-hour period shall commence upon the next
13 nonholiday weekday following the court order and shall run to the end
14 of the last nonholiday weekday within the (~~seventy-two~~) 72-hour
15 period.

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

25 (4) If at any time the court dismisses charges under subsections
26 (1) through (3) of this section, the court shall make a finding as to
27 whether the defendant has a history of one or more violent acts. If
28 the court so finds, the defendant is barred from the possession of
29 firearms until a court restores his or her right to possess a firearm
30 under RCW 9.41.047. The court shall state to the defendant and
31 provide written notice that the defendant is barred from the
32 possession of firearms and that the prohibition remains in effect
33 until a court restores his or her right to possess a firearm under
34 RCW 9.41.047.

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