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**SENATE BILL 5210**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Dhingra, Darneille, Kuderer, Nguyen, and Wilson, C.; by request of Department of Social and Health Services

Read first time 01/14/21. Referred to Committee on Health & Long Term Care.

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.

2 (B) If the court orders inpatient competency restoration, the  
3 department shall place the defendant in an appropriate facility of  
4 the department for competency restoration.

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

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

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

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

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

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

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

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

24 (3) If the court finds by a preponderance of the evidence that a  
25 defendant charged with a felony is incompetent, the court shall have  
26 the option of extending the order of commitment or alternative  
27 treatment for an additional period of (~~ninety~~) 90 days, but the  
28 court must at the time of extension set a date for a prompt hearing  
29 to determine the defendant's competency before the expiration of the  
30 second restoration period. The defendant, the defendant's attorney,  
31 or the prosecutor has the right to demand that the hearing be before  
32 a jury. No extension shall be ordered for a second or third  
33 restoration period as provided in subsection (4) of this section if  
34 the defendant's incompetence has been determined by the secretary to  
35 be solely the result of a developmental disability which is such that  
36 competence is not reasonably likely to be regained during an  
37 extension. The (~~ninety~~) 90-day period includes only the time the  
38 defendant is actually at the facility and is in addition to  
39 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~~) 120 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.

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

28 (iii) If the court orders outpatient competency restoration, the  
29 court shall modify conditions of release as needed to authorize the  
30 department to place the person in approved housing, which may include  
31 access to supported housing, affiliated with a contracted outpatient  
32 competency restoration program. The department, in conjunction with  
33 the health care authority, must establish rules for conditions of  
34 participation in the outpatient competency restoration program, which  
35 must include the defendant being subject to medication management and  
36 regular urinalysis testing for defendants who have a current  
37 substance use disorder diagnosis. The outpatient competency  
38 restoration program shall monitor the defendant during the  
39 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~~) 120 hours, excluding Saturdays, Sundays, and holidays, for  
11 evaluation for purposes of filing a petition under chapter 71.05 RCW.  
12 The (~~seventy-two~~) 120-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~~) 120-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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