
SECOND SUBSTITUTE SENATE BILL 5664

State of Washington

67th Legislature

2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, Keiser, and Nobles)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to forensic competency restoration programs;
2 amending RCW 10.77.060, 10.77.068, 10.77.086, 10.77.088, 10.77.220,
3 and 10.77.250; reenacting and amending RCW 10.77.010; and adding new
4 sections to chapter 10.77 RCW.

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

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

8 As used in this chapter:

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

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

14 (3) "Community behavioral health agency" has the same meaning as
15 "licensed or certified behavioral health agency" defined in RCW
16 71.24.025.

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

19 (5) A "criminally insane" person means any person who has been
20 acquitted of a crime charged by reason of insanity, and thereupon
21 found to be a substantial danger to other persons or to present a

1 substantial likelihood of committing criminal acts jeopardizing
2 public safety or security unless kept under further control by the
3 court or other persons or institutions.

4 (6) "Department" means the state department of social and health
5 services.

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

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

10 (9) "Developmental disabilities professional" means a person who
11 has specialized training and three years of experience in directly
12 treating or working with persons with developmental disabilities and
13 is a psychiatrist or psychologist, or a social worker, and such other
14 developmental disabilities professionals as may be defined by rules
15 adopted by the secretary.

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

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

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

28 (13) "Habilitative services" means those services provided by
29 program personnel to assist persons in acquiring and maintaining life
30 skills and in raising their levels of physical, mental, social, and
31 vocational functioning. Habilitative services include education,
32 training for employment, and therapy. The habilitative process shall
33 be undertaken with recognition of the risk to the public safety
34 presented by the person being assisted as manifested by prior charged
35 criminal conduct.

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

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

3 (16) "Incompetency" means a person lacks the capacity to
4 understand the nature of the proceedings against him or her or to
5 assist in his or her own defense as a result of mental disease or
6 defect.

7 (17) "Indigent" means any person who is financially unable to
8 obtain counsel or other necessary expert or professional services
9 without causing substantial hardship to the person or his or her
10 family.

11 (18) "Individualized service plan" means a plan prepared by a
12 developmental disabilities professional with other professionals as a
13 team, for an individual with developmental disabilities, which shall
14 state:

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

17 (b) The conditions and strategies necessary to achieve the
18 purposes of habilitation;

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

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

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

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

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

30 (19) "Professional person" means:

31 (a) A psychiatrist licensed as a physician and surgeon in this
32 state who has, in addition, completed three years of graduate
33 training in psychiatry in a program approved by the American medical
34 association or the American osteopathic association and is certified
35 or eligible to be certified by the American board of psychiatry and
36 neurology or the American osteopathic board of neurology and
37 psychiatry;

38 (b) A psychologist licensed as a psychologist pursuant to chapter
39 18.83 RCW; or

1 (c) A social worker with a master's or further advanced degree
2 from a social work educational program accredited and approved as
3 provided in RCW 18.320.010.

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

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

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

10 (23) "Treatment records" include registration and all other
11 records concerning persons who are receiving or who at any time have
12 received services for mental illness, which are maintained by the
13 department, by behavioral health administrative services
14 organizations and their staffs, by managed care organizations and
15 their staffs, and by treatment facilities. Treatment records do not
16 include notes or records maintained for personal use by a person
17 providing treatment services for the department, behavioral health
18 administrative services organizations, managed care organizations, or
19 a treatment facility if the notes or records are not available to
20 others.

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

31 (25) "Authority" means the Washington state health care
32 authority.

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

35 (1) (a) Whenever a defendant has pleaded not guilty by reason of
36 insanity, or there is reason to doubt his or her competency, the
37 court on its own motion or on the motion of any party shall either
38 appoint or request the secretary to designate a qualified expert or
39 professional person, who shall be approved by the prosecuting

1 attorney, to evaluate and report upon the mental condition of the
2 defendant.

3 (b) The signed order of the court shall serve as authority for
4 the evaluator to be given access to all records held by any mental
5 health, medical, educational, or correctional facility that relate to
6 the present or past mental, emotional, or physical condition of the
7 defendant. If the court is advised by any party that the defendant
8 may have a developmental disability, the evaluation must be performed
9 by a developmental disabilities professional and the evaluator shall
10 have access to records of the developmental disabilities
11 administration of the department.

12 (c) The evaluator shall assess the defendant in a jail, detention
13 facility, in the community, or in court to determine whether a period
14 of inpatient commitment will be necessary to complete an accurate
15 evaluation. If inpatient commitment is needed, the signed order of
16 the court shall serve as authority for the evaluator to request the
17 jail or detention facility to transport the defendant to a hospital
18 or secure mental health facility for a period of commitment not to
19 exceed fifteen days from the time of admission to the facility.
20 Otherwise, the evaluator shall complete the evaluation.

21 (d) The court may commit the defendant for evaluation to a
22 hospital or secure mental health facility without an assessment if:
23 (i) The defendant is charged with murder in the first or second
24 degree; (ii) the court finds that it is more likely than not that an
25 evaluation in the jail will be inadequate to complete an accurate
26 evaluation; or (iii) the court finds that an evaluation outside the
27 jail setting is necessary for the health, safety, or welfare of the
28 defendant. The court shall not order an initial inpatient evaluation
29 for any purpose other than a competency evaluation.

30 (e) The order shall indicate whether, in the event the defendant
31 is committed to a hospital or secure mental health facility for
32 evaluation, all parties agree to waive the presence of the defendant
33 or to the defendant's remote participation at a subsequent competency
34 hearing or presentation of an agreed order if the recommendation of
35 the evaluator is for continuation of the stay of criminal
36 proceedings, or if the opinion of the evaluator is that the defendant
37 remains incompetent and there is no remaining restoration period, and
38 the hearing is held prior to the expiration of the authorized
39 commitment period.

1 (f) When a defendant is ordered to be evaluated under this
2 subsection (1), or when a party or the court determines at first
3 appearance that an order for evaluation under this subsection will be
4 requested or ordered if charges are pursued, the court may delay
5 granting bail until the defendant has been evaluated for competency
6 or sanity and appears before the court. Following the evaluation, in
7 determining bail the court shall consider: (i) Recommendations of the
8 evaluator regarding the defendant's competency, sanity, or diminished
9 capacity; (ii) whether the defendant has a recent history of one or
10 more violent acts; (iii) whether the defendant has previously been
11 acquitted by reason of insanity or found incompetent; (iv) whether it
12 is reasonably likely the defendant will fail to appear for a future
13 court hearing; and (v) whether the defendant is a threat to public
14 safety.

15 (2) The court may direct that a qualified expert or professional
16 person retained by or appointed for the defendant be permitted to
17 witness the evaluation authorized by subsection (1) of this section,
18 and that the defendant shall have access to all information obtained
19 by the court appointed experts or professional persons. The
20 defendant's expert or professional person shall have the right to
21 file his or her own report following the guidelines of subsection (3)
22 of this section. If the defendant is indigent, the court shall upon
23 the request of the defendant assist him or her in obtaining an expert
24 or professional person.

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

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

27 (b) A diagnosis or description of the current mental status of
28 the defendant;

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

31 (d) If the defendant has indicated his or her intention to rely
32 on the defense of insanity pursuant to RCW 10.77.030, and an
33 evaluation and report by an expert or professional person has been
34 provided concluding that the defendant was criminally insane at the
35 time of the alleged offense, an opinion as to the defendant's sanity
36 at the time of the act, and an opinion as to whether the defendant
37 presents a substantial danger to other persons, or presents a
38 substantial likelihood of committing criminal acts jeopardizing
39 public safety or security, unless kept under further control by the
40 court or other persons or institutions, provided that no opinion

1 shall be rendered under this subsection (3)(d) unless the evaluator
2 or court determines that the defendant is competent to stand trial;

3 (e) When directed by the court, if an evaluation and report by an
4 expert or professional person has been provided concluding that the
5 defendant lacked the capacity at the time of the offense to form the
6 mental state necessary to commit the charged offense, an opinion as
7 to the capacity of the defendant to have a particular state of mind
8 which is an element of the offense charged;

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

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

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

16 (1)(a) The legislature establishes (~~the following~~) a
17 performance (~~targets and maximum time limits for the timeliness of~~
18 ~~the completion of accurate and reliable evaluations of competency to~~
19 ~~stand trial and admissions for inpatient restoration services related~~
20 ~~to competency to proceed or stand trial for adult criminal~~
21 ~~defendants~~) target of seven days or fewer for the following services
22 related to competency to stand trial, when access to the services is
23 legally authorized:

24 (i) To extend an offer of admission to a defendant in pretrial
25 custody for inpatient competency evaluation or inpatient competency
26 restoration services;

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

30 (iii) To complete a competency evaluation in jail and distribute
31 the evaluation report.

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

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

38 (3) The legislature recognizes that these targets may not be
39 achievable in all cases (~~without compromise to the quality of~~

1 ~~competency evaluation and restoration services)), but intends for the~~
2 ~~department to manage, allocate, and request appropriations for~~
3 ~~resources in order to meet these targets whenever possible without~~
4 ~~sacrificing the accuracy and quality of competency ((evaluations and~~
5 ~~restorations, and to otherwise make sustainable improvements and~~
6 ~~track performance related to the timeliness of competency services:~~

7 ~~(i) For a state hospital to extend an offer of admission to a~~
8 ~~defendant in pretrial custody for legally authorized evaluation~~
9 ~~services related to competency, or to extend an offer of admission~~
10 ~~for legally authorized services following dismissal of charges based~~
11 ~~on incompetence to proceed or stand trial:~~

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

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

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

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

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

19 ~~(iii) For completion of a competency evaluation in jail and~~
20 ~~distribution of the evaluation report for a defendant in pretrial~~
21 ~~custody:~~

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

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

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

31 ~~((b)) The time periods measured in ((these performance targets~~
32 ~~and maximum time limits)) subsection (1) of this section shall run~~
33 ~~from the date on which the state hospital receives the court referral~~
34 ~~and charging documents, discovery, police reports, the names and~~
35 ~~addresses of the attorneys for the defendant and state or county, the~~
36 ~~name of the judge ordering the evaluation, information about the~~
37 ~~alleged crime, and criminal history information related to the~~
38 ~~defendant. ((The maximum time limits in (a) of this subsection shall~~
39 ~~be phased in over a one-year period beginning July 1, 2015, in a~~

1 ~~manner that results in measurable incremental progress toward meeting~~
2 ~~the time limits over the course of the year.~~

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

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

14 ~~((ii))~~ (b) The individual circumstances of the defendant make
15 accurate completion of an evaluation of competency to ~~((proceed or))~~
16 stand trial dependent upon review of mental health, substance use
17 disorder, or medical history information which is in the custody of a
18 third party and cannot be immediately obtained by the department ~~((~~
19 ~~Completion of a competency evaluation))~~, provided that completion
20 shall not be postponed for procurement of ~~((mental health, substance~~
21 ~~use disorder, or medical history))~~ information which is merely
22 supplementary ~~((to the competency determination))~~;

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

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

28 (e) Completion of the referral ~~((is frustrated by lack of))~~
29 requires additional time to accommodate the availability or
30 participation ~~((by))~~ of counsel, ~~((jail or))~~ court personnel,
31 interpreters, or the defendant;

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

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

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

1 ~~((2))~~ (5) The department shall provide written notice to the
2 court when it will not be able to meet the maximum time limits under
3 subsection (2) of this section and identify the reasons for the delay
4 and provide a reasonable estimate of the time necessary to complete
5 the competency service. Good cause for an extension for the
6 additional time estimated by the department shall be presumed absent
7 a written response from the court or a party received by the
8 department within seven days.

9 (6) The department shall:

10 (a) Develop, document, and implement procedures to monitor the
11 clinical status of defendants admitted to a state hospital for
12 competency services that allow the state hospital to accomplish early
13 discharge for defendants for whom clinical objectives have been
14 achieved or may be achieved before expiration of the commitment
15 period;

16 (b) Investigate the extent to which patients admitted to a state
17 hospital under this chapter overstay time periods authorized by law
18 and take reasonable steps to limit the time of commitment to
19 authorized periods; and

20 (c) Establish written standards for the productivity of forensic
21 evaluators and utilize these standards to internally review the
22 performance of forensic evaluators.

23 ~~((3))~~ (7) Following any quarter in which a state hospital has
24 failed to meet one or more of the performance targets or maximum time
25 limits ~~((in))~~ under subsection (1) or (2) of this section ~~((after~~
26 ~~full implementation of the performance target or maximum time~~
27 ~~limit)),~~ the department shall report to the executive and the
28 legislature the extent of this deviation and describe any corrective
29 action being taken to improve performance. This report ~~((must))~~ shall
30 be made publicly available. An average may be used to determine
31 timeliness under this subsection.

32 ~~((4) Beginning December 1, 2013, the))~~ (8) The department shall
33 report annually to the legislature and the executive on the
34 timeliness of services related to competency to ~~((proceed or))~~ stand
35 trial and the timeliness with which court referrals accompanied by
36 charging documents, discovery, and criminal history information are
37 provided to the department relative to the signature date of the
38 court order. The report must be in a form that is accessible to the
39 public and that breaks down performance by county.

1 ~~((5))~~ (9) This section does not create any new entitlement or
2 cause of action related to the timeliness of competency ~~((evaluations~~
3 ~~or admission for inpatient restoration))~~ to stand trial services
4 ~~((related to competency to proceed or stand trial))~~, nor can it form
5 the basis for contempt sanctions under chapter 7.21 RCW or a motion
6 to dismiss criminal charges.

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

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

20 ~~((A))~~ (a) To be eligible for an order for outpatient competency
21 restoration, a defendant must be clinically appropriate and be
22 willing to:

23 ~~((I))~~ (i) Adhere to medications or receive prescribed
24 intramuscular medication; ~~((and~~
25 ~~(II))~~ (ii) Abstain from alcohol and unprescribed drugs; and
26 (iii) Comply with urinalysis or breathalyzer monitoring if
27 needed.

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

31 ~~((C))~~ (c) If the court orders outpatient competency
32 restoration, the court shall modify conditions of release as needed
33 to authorize the department to place the person in approved housing,
34 which may include access to supported housing, affiliated with a
35 contracted outpatient competency restoration program. The department,
36 in conjunction with the health care authority, must establish rules
37 for conditions of participation in the outpatient competency
38 restoration program, which must include the defendant being subject
39 to medication management ~~((and))~~. The court may order regular

1 urinalysis testing (~~for defendants who have a current substance use~~
2 ~~disorder diagnosis~~). The outpatient competency restoration program
3 shall monitor the defendant during the defendant's placement in the
4 program and report any noncompliance or significant changes with
5 respect to the defendant to the department and, if applicable, the
6 forensic navigator.

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

30 (i) The department may authorize a peace officer to detain the
31 defendant into emergency custody for transport to a crisis
32 stabilization unit, evaluation and treatment facility, emergency
33 department of a local hospital, or triage facility for medical
34 clearance, and may authorize the peace officer to detain the
35 defendant for transport to the designated inpatient competency
36 restoration facility. The signed outpatient competency restoration
37 order of the court shall serve as authority for the detention of the
38 defendant under this subsection. This subsection does not preclude
39 voluntary transportation of the defendant to a facility for medical

1 clearance or inpatient competency restoration, or authorize admission
2 of the defendant into jail.

3 ~~((ii))~~ The department shall notify the court and parties of the
4 ~~((change in placement))~~ defendant's admission for inpatient
5 competency restoration before the close of the next judicial day. The
6 court shall schedule a hearing within five days to review the
7 ~~((placement and))~~ conditions of release of the defendant and
8 anticipated release from treatment and issue appropriate orders.
9 ~~((The standard of proof shall be a preponderance of the evidence, and~~
10 ~~the court may in its discretion render its decision based on written~~
11 ~~submissions, live testimony, or remote testimony.~~

12 ~~(E))~~ (e) The court may not issue an order for outpatient
13 competency restoration unless the department certifies that there is
14 an available appropriate outpatient competency restoration program
15 that has adequate space for the person at the time the order is
16 issued or the court places the defendant under the guidance and
17 control of a professional person identified in the court order.

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

22 ~~(b))~~ (2) For a defendant whose highest charge is a class C
23 felony, or a class B felony that is not classified as violent under
24 RCW 9.94A.030, the maximum time allowed for the initial felony
25 competency restoration period ~~((of commitment for competency~~
26 ~~restoration))~~ is ~~((forty-five))~~ 45 days. ~~((The forty-five day period~~
27 ~~includes only the time the defendant is actually at the facility and~~
28 ~~is in addition to reasonable time for transport to or from the~~
29 ~~facility.~~

30 ~~(e))~~ (3) If the court determines or the parties agree before the
31 initial felony competency restoration period or at any subsequent
32 stage of the proceedings that the defendant is unlikely to regain
33 competency, the court may dismiss the charges without prejudice
34 without ordering the defendant to undergo an initial or further
35 period of competency restoration treatment, in which case the court
36 shall order that the defendant be referred for evaluation for civil
37 commitment in the manner provided in subsection ~~((4))~~ (5) of this
38 section.

39 ~~((2))~~ (4) On or before expiration of the initial felony
40 competency restoration period ~~((of commitment under subsection (1) of~~

1 ~~this section~~) the court shall conduct a hearing (~~, at which it~~
2 ~~shall~~) to determine whether ((or not)) the defendant is
3 ~~((incompetent. (3))~~) now competent to stand trial. If the court finds
4 by a preponderance of the evidence that ((a)) the defendant ((charged
5 ~~with a felony)) is incompetent to stand trial, the court ~~((shall have~~
6 ~~the option of extending the))~~ may order ((of commitment or
7 ~~alternative treatment))~~ an extension of the competency restoration
8 period for an additional period of ~~((ninety))~~ 90 days, but the court
9 must at the same time ~~((of extension))~~ set a date for a ~~((prompt))~~
10 new hearing to determine the defendant's competency to stand trial
11 before the expiration of ~~((the))~~ this second restoration period. The
12 defendant, the defendant's attorney, ~~((or))~~ and the prosecutor
13 ~~((has))~~ have the right to demand that the hearing be before a jury.
14 No extension shall be ordered for a second or third felony competency
15 restoration period ~~((as provided in subsection (4) of this section))~~
16 if the defendant's incompetence has been determined by the secretary
17 to be solely the result of a developmental disability which is such
18 that competence is not reasonably likely to be regained during an
19 extension. ~~((The ninety-day period includes only the time the~~
20 ~~defendant is actually at the facility and is in addition to~~
21 ~~reasonable time for transport to or from the facility.~~~~

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

23 (5) At the hearing upon the expiration of the second felony
24 competency restoration period, or at the end of the first felony
25 competency restoration period ~~((in the case of a))~~ if the defendant
26 ~~((with a developmental disability))~~ is ineligible for a second or
27 third competency restoration period under subsection (4) of this
28 section, if the jury or court finds that the defendant is
29 incompetent ~~((, or if the court or jury at any stage finds that the~~
30 ~~defendant is incompetent and the court determines that the defendant~~
31 ~~is unlikely to regain competency, the charges shall be dismissed))~~ to
32 stand trial, the court shall dismiss the charges without
33 prejudice ~~((,))~~ and ~~((the court shall))~~ order the defendant to be
34 committed to a state hospital ~~((as defined in RCW 72.23.010))~~ for up
35 to ~~((seventy-two))~~ 120 hours if the defendant has not undergone
36 competency restoration services and up to 72 hours if the defendant
37 engaged in competency restoration services starting from admission to
38 the facility, excluding Saturdays, Sundays, and holidays, for
39 evaluation for the purpose of filing a civil commitment petition
40 under chapter 71.05 RCW. ~~((The criminal charges))~~ However, the court

1 shall not (~~be dismissed~~) dismiss the charges if the court or jury
2 finds that: (a) The defendant (i) is a substantial danger to other
3 persons; or (ii) presents a substantial likelihood of committing
4 criminal acts jeopardizing public safety or security; and (b) there
5 is a substantial probability that the defendant will regain
6 competency within a reasonable period of time. (~~In the event that~~)
7 If the court or jury makes such a finding, the court may extend the
8 period of commitment for up to an additional six months. (~~The six-~~
9 ~~month~~)

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

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

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

19 (a) Shall dismiss the proceedings without prejudice and detain
20 the defendant for sufficient time to allow the designated crisis
21 responder to evaluate the defendant and consider initial detention
22 proceedings under chapter 71.05 RCW, unless the prosecutor objects to
23 the dismissal and provides notice of a motion for an order for
24 nonfelony competency restoration treatment, in which case the court
25 shall schedule a hearing within seven days (~~to determine whether to~~
26 ~~enter an order of competency restoration~~)).

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

1 (2) ~~((a))~~ If a court finds pursuant to subsection (1)(b) of this
2 section that there is a compelling state interest in pursuing
3 nonfelony competency restoration treatment, ~~((then))~~ the court shall
4 commit the defendant to the custody of the secretary for inpatient
5 competency restoration ~~((Based))~~, or may alternatively order the
6 defendant to receive outpatient competency restoration based on a
7 recommendation from a forensic navigator and input from the
8 parties ~~((, the court may order the defendant to receive inpatient~~
9 ~~competency restoration or outpatient competency restoration))~~.

10 ~~((i))~~ (a) To be eligible for an order for outpatient competency
11 restoration, a defendant must be clinically appropriate and be
12 willing to:

13 ~~((A))~~ (i) Adhere to medications or receive prescribed
14 intramuscular medication; ~~((and~~
15 ~~(B))~~ (ii) Abstain from alcohol and unprescribed drugs; and
16 (iii) Comply with urinalysis or breathalyzer monitoring if
17 needed.

18 ~~((ii))~~ (b) If the court orders inpatient competency
19 restoration, the department shall place the defendant in an
20 appropriate facility of the department for competency restoration
21 under ~~((b))~~ subsection (3) of this ~~((subsection))~~ section.

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

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

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

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

32 (ii) The department shall notify the court and parties of the
33 ((change in placement)) defendant's admission for inpatient
34 competency restoration before the close of the next judicial day. The
35 court shall schedule a hearing within five days to review the
36 ((placement and)) conditions of release of the defendant and
37 anticipated release from treatment 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 ~~(v)~~) (e) The court may not issue an order for outpatient
2 competency restoration unless the department certifies that there is
3 an available appropriate outpatient restoration program that has
4 adequate space for the person at the time the order is issued or the
5 court places the defendant under the guidance and control of a
6 professional person identified in the court order.

7 ~~((b))~~ (3) The placement under ~~((a))~~ subsection (2) of this
8 ~~((subsection))~~ section shall not exceed ~~((twenty-nine))~~ 29 days if
9 the defendant is ordered to receive inpatient competency restoration,
10 ~~((or))~~ and shall not exceed ~~((ninety))~~ 90 days if the defendant is
11 ordered to receive outpatient competency restoration. The court may
12 order any combination of this subsection~~((, not to exceed ninety~~
13 ~~days. This period must be considered to include only the time the~~
14 ~~defendant is actually at the facility and shall be in addition to~~
15 ~~reasonable time for transport to or from the facility))~~.

16 ~~((e))~~ (4) If the court has determined or the parties agree that
17 the defendant is unlikely to regain competency, the court may dismiss
18 the charges without prejudice without ordering the defendant to
19 undergo nonfelony competency restoration treatment, in which case the
20 court shall order that the defendant be referred for evaluation for
21 civil commitment in the manner provided in ~~((d))~~ subsection (5) of
22 this ~~((subsection))~~ section.

23 ~~((d-i))~~ (5)(a) If the proceedings are dismissed under RCW
24 10.77.084 and the defendant was on conditional release at the time of
25 dismissal, the court shall order the designated crisis responder
26 within that county to evaluate the defendant pursuant to chapter
27 71.05 RCW. The evaluation may be conducted in any location chosen by
28 the professional.

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

1 ~~((3))~~ (6) If the defendant is charged with a nonfelony crime
2 that is not a serious offense as defined in RCW 10.77.092 and found
3 by the court to be not competent, the court may stay or dismiss
4 proceedings and detain the defendant for sufficient time to allow the
5 designated crisis responder to evaluate the defendant and consider
6 initial detention proceedings under chapter 71.05 RCW. The court must
7 give notice to all parties at least ~~((twenty-four))~~ 24 hours before
8 the dismissal of any proceeding under this subsection, and provide an
9 opportunity for a hearing on whether to dismiss the proceedings.

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

20 (8) Any period of competency restoration treatment under this
21 section 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. 6.** RCW 10.77.220 and 2015 1st sp.s. c 7 s 8 are each
25 amended to read as follows:

26 (1) No person who is criminally insane confined pursuant to this
27 chapter shall be incarcerated in a state correctional institution or
28 facility. This section does not apply to confinement in a mental
29 health facility located wholly within a correctional institution.
30 Confinement of a person who is criminally insane in a county jail or
31 other local facility while awaiting either placement in a treatment
32 program or a court hearing pursuant to this chapter is permitted for
33 no more than seven days.

34 (2) In the event that a person remains in jail 21 days after
35 service on the department of a court order to transport the person to
36 a facility designated by the department for inpatient competency
37 restoration treatment, the department shall upon the request of any
38 party perform a competency to stand trial status check at reasonable
39 intervals to determine if the circumstances of the person have

1 changed such that the court should authorize an updated competency
2 evaluation, and provide a status update to the parties and the court.

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

5 ~~((The))~~ (1) Within amounts appropriated, the department shall be
6 responsible for all costs relating to the evaluation and inpatient
7 treatment of persons committed to it pursuant to any provisions of
8 this chapter, and the logistical and supportive services pertaining
9 thereto except as otherwise provided by law. Reimbursement may be
10 obtained by the department pursuant to RCW 43.20B.330.

11 (2) Within amounts appropriated, the authority shall be
12 responsible for all costs relating to outpatient competency
13 restoration programs.

14 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.77
15 RCW to read as follows:

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

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.77
29 RCW to read as follows:

30 The authority shall report annually to the governor and relevant
31 committees of the legislature, beginning November 1, 2022,
32 describing:

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

35 (2) The length of stay of individuals in outpatient competency
36 restoration programs;

1 (3) The number of individuals who are revoked from an outpatient
2 competency restoration program into inpatient treatment, and the
3 outcomes of other individuals, if any, whose participation in an
4 outpatient competency restoration program were terminated before the
5 completion of the program; and

6 (4) For individuals who were revoked from an outpatient
7 competency restoration program into an inpatient competency
8 restoration program, how many days the individuals spent in
9 outpatient competency restoration treatment and inpatient competency
10 restoration treatment, and whether the restoration programs resulted
11 in a finding of competent to stand trial or another outcome.

--- END ---