

E2SSB 5440 - H COMM AMD
By Committee on Appropriations

NOT ADOPTED 04/11/2023

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that defendants
4 referred for services related to competency to stand trial requiring
5 admission into a psychiatric facility are currently facing
6 unprecedented wait times in jail for admission. The situation has
7 been exacerbated by closure of forensic beds and workforce shortages
8 related to COVID-19, and treatment capacity limits related to social
9 distancing requirements. Moreover, a backlog of criminal prosecutions
10 that were held back during the first two years of the pandemic due to
11 capacity limitations in courts, prosecuting attorneys offices, and
12 jails, are now being filed, causing a surge in demand for competency
13 services which exceeds the state's capacity to make a timely
14 response. In partial consequence, as of January 2023, wait times for
15 admission to western state hospital for competency services, directed
16 to be completed within seven days by order of the United States
17 district court for western Washington, have risen to over ten months,
18 while wait times for admission to eastern state hospital for the same
19 services have risen to over five months. The state's forensic bed
20 capacity forecast model indicates that if the state continues to
21 receive competency referrals from local superior, district, and
22 municipal courts at the same volume, the state will rapidly fall
23 farther behind.

24 The legislature further finds that historical investments and
25 policy changes have been made in behavioral health services over the
26 past five years, designed to both increase capacity to provide
27 competency to stand trial services and to reduce the need for them by
28 creating opportunities for diversion, prevention, and improved
29 community health. New construction at western state hospital is
30 expected to result in the opening of 58 forensic psychiatric beds in
31 the first quarter of 2023, while emergency community hospital

1 contracts are expected to allow for the discharge or transfer of over
2 50 civil conversion patients occupying forensic state hospital beds
3 over the same period. Sixteen beds for civil conversion patients will
4 open at Maple Lane school in the first quarter of 2023, with 30
5 additional beds for patients acquitted by reason of insanity expected
6 to open by late 2023 or early 2024. Over a longer time period, 350
7 forensic beds are planned to open within a new forensic hospital on
8 western state hospital campus between 2027 and 2029. Policy and
9 budget changes have increased capacity for assisted outpatient
10 treatment, 988 crisis response, use of medication for opioid use
11 disorders in jails and community settings, reentry services, and
12 mental health advance directives, and created new behavioral health
13 facility types, supportive housing, and supportive employment
14 services. Forensic navigator services, outpatient competency
15 restoration programs, and other specialty forensic services are now
16 available and continuing to be deployed in phase two *Trueblood*
17 settlement regions.

18 The legislature further finds that despite these investments
19 there is a need for everyone to come together to find solutions to
20 both reduce demand for forensic services and to increase their
21 supply. The state needs collaboration from local governments and
22 other entities to identify any and all facilities that can be used to
23 provide services to patients connected to the forensic system, to
24 reduce the flow of competency referrals coming from municipal,
25 district, and superior courts, and to improve availability and
26 effectiveness of behavioral health services provided outside the
27 criminal justice system.

28 **Sec. 2.** RCW 10.77.010 and 2022 c 288 s 1 are each reenacted and
29 amended to read as follows:

30 As used in this chapter:

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

33 (2) "Authority" means the Washington state health care authority.

34 (3) "Clinical intervention specialist" means a licensed
35 professional with prescribing authority who is employed by or
36 contracted with the department to provide direct services, enhanced
37 oversight and monitoring of the behavioral health status of in-
38 custody defendants who have been referred for evaluation or
39 restoration services related to competency to stand trial and who

1 coordinate treatment options with forensic navigators, the
2 department, and jail health services.

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

6 ~~((4))~~ (5) "Community behavioral health agency" has the same
7 meaning as "licensed or certified behavioral health agency" defined
8 in RCW 71.24.025.

9 ~~((5))~~ (6) "Conditional release" means modification of a court-
10 ordered commitment, which may be revoked upon violation of any of its
11 terms.

12 ~~((6))~~ (7) A "criminally insane" person means any person who has
13 been acquitted of a crime charged by reason of insanity, and
14 thereupon found to be a substantial danger to other persons or to
15 present a substantial likelihood of committing criminal acts
16 jeopardizing public safety or security unless kept under further
17 control by the court or other persons or institutions.

18 ~~((7))~~ (8) "Department" means the state department of social and
19 health services.

20 ~~((8))~~ (9) "Designated crisis responder" has the same meaning as
21 provided in RCW 71.05.020.

22 ~~((9))~~ (10) "Detention" or "detain" means the lawful confinement
23 of a person, under the provisions of this chapter, pending
24 evaluation.

25 ~~((10))~~ (11) "Developmental disabilities professional" means a
26 person who has specialized training and ~~((three years of))~~ experience
27 in directly treating or working with persons with developmental
28 disabilities and is a psychiatrist or psychologist, or a social
29 worker, and such other developmental disabilities professionals as
30 may be defined by rules adopted by the secretary.

31 ~~((11))~~ (12) "Developmental disability" means the condition as
32 defined in RCW 71A.10.020~~((5))~~.

33 ~~((12))~~ (13) "Discharge" means the termination of hospital
34 medical authority. The commitment may remain in place, be terminated,
35 or be amended by court order.

36 ~~((13))~~ (14) "Furlough" means an authorized leave of absence for
37 a resident of a state institution operated by the department
38 designated for the custody, care, and treatment of the criminally
39 insane, consistent with an order of conditional release from the
40 court under this chapter, without any requirement that the resident

1 be accompanied by, or be in the custody of, any law enforcement or
2 institutional staff, while on such unescorted leave.

3 ~~((14))~~ (15) "Genuine doubt as to competency" means that there
4 is reasonable cause to believe, based upon actual interactions with
5 or observations of the defendant or information provided by counsel,
6 that a defendant is incompetent to stand trial.

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

15 ~~((15))~~ (17) "History of one or more violent acts" means violent
16 acts committed during: (a) The ten-year period of time prior to the
17 filing of criminal charges; plus (b) the amount of time equal to time
18 spent during the ten-year period in a mental health facility or in
19 confinement as a result of a criminal conviction.

20 ~~((16))~~ (18) "Immediate family member" means a spouse, child,
21 stepchild, parent, stepparent, grandparent, sibling, or domestic
22 partner.

23 ~~((17))~~ (19) "Incompetency" means a person lacks the capacity to
24 understand the nature of the proceedings against him or her or to
25 assist in his or her own defense as a result of mental disease or
26 defect.

27 ~~((18))~~ (20) "Indigent" means any person who is financially
28 unable to obtain counsel or other necessary expert or professional
29 services without causing substantial hardship to the person or his or
30 her family.

31 ~~((19))~~ (21) "Individualized service plan" means a plan prepared
32 by a developmental disabilities professional with other professionals
33 as a team, for an individual with developmental disabilities, which
34 shall state:

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

37 (b) The conditions and strategies necessary to achieve the
38 purposes of habilitation;

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

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

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

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

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

10 (~~(20)~~) (22) "Professional person" means:

11 (a) A psychiatrist licensed as a physician and surgeon in this
12 state who has, in addition, completed three years of graduate
13 training in psychiatry in a program approved by the American medical
14 association or the American osteopathic association and is certified
15 or eligible to be certified by the American board of psychiatry and
16 neurology or the American osteopathic board of neurology and
17 psychiatry;

18 (b) A psychologist licensed as a psychologist pursuant to chapter
19 18.83 RCW;

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

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

25 (~~(21)~~) (23) "Release" means legal termination of the court-
26 ordered commitment under the provisions of this chapter.

27 (~~(22)~~) (24) "Secretary" means the secretary of the department
28 of social and health services or his or her designee.

29 (~~(23)~~) (25) "Treatment" means any currently standardized
30 medical or mental health procedure including medication.

31 (~~(24)~~) (26) "Treatment records" include registration and all
32 other records concerning persons who are receiving or who at any time
33 have received services for mental illness, which are maintained by
34 the department, by behavioral health administrative services
35 organizations and their staffs, by managed care organizations and
36 their staffs, and by treatment facilities. Treatment records do not
37 include notes or records maintained for personal use by a person
38 providing treatment services for the department, behavioral health
39 administrative services organizations, managed care organizations, or

1 a treatment facility if the notes or records are not available to
2 others.

3 ~~((25))~~ (27) "Violent act" means behavior that: (a) (i) Resulted
4 in; (ii) if completed as intended would have resulted in; or (iii)
5 was threatened to be carried out by a person who had the intent and
6 opportunity to carry out the threat and would have resulted in,
7 homicide, nonfatal injuries, or substantial damage to property; or
8 (b) recklessly creates an immediate risk of serious physical injury
9 to another person. As used in this subsection, "nonfatal injuries"
10 means physical pain or injury, illness, or an impairment of physical
11 condition. "Nonfatal injuries" shall be construed to be consistent
12 with the definition of "bodily injury," as defined in RCW 9A.04.110.

13 **Sec. 3.** RCW 10.77.060 and 2022 c 288 s 2 are each amended to
14 read as follows:

15 (1) (a) Whenever a defendant has pleaded not guilty by reason of
16 insanity, ~~((or there is reason to doubt his or her competency,))~~ the
17 court on its own motion or on the motion of any party shall either
18 appoint or request the secretary to designate a qualified expert or
19 professional person, who shall be approved by the prosecuting
20 attorney, to evaluate and report upon the mental condition of the
21 defendant.

22 (b) (i) Whenever there is a doubt as to competency, the court on
23 its own motion or on the motion of any party shall first review the
24 allegations of incompetency. The court shall make a determination of
25 whether sufficient facts have been provided to form a genuine doubt
26 as to competency based on information provided by counsel, judicial
27 colloquy, or direct observation of the defendant. If a genuine doubt
28 as to competency exists, the court shall either appoint or request
29 the secretary to designate a qualified expert or professional person,
30 who shall be approved by the prosecuting attorney, to evaluate and
31 report upon the mental condition of the defendant.

32 (ii) Nothing in this subsection (1) (b) is intended to require a
33 waiver of attorney-client privilege. Defense counsel may meet the
34 requirements under this subsection (1) (b) by filing a declaration
35 stating that they have reason to believe that a competency evaluation
36 is necessary, and stating the basis on which the defendant is
37 believed to be incompetent, without further detail required.

38 (c) The signed order of the court shall serve as authority for
39 the evaluator to be given access to all records held by any mental

1 health, medical, long-term services or supports, educational, or
2 correctional facility that relate to the present or past mental,
3 emotional, or physical condition of the defendant. If the court is
4 advised by any party that the defendant may have a developmental
5 disability, the evaluation must be performed by a developmental
6 disabilities professional and the evaluator shall have access to
7 records of the developmental disabilities administration of the
8 department. If the court is advised by any party that the defendant
9 may have dementia or another relevant neurocognitive disorder, the
10 evaluator shall have access to records of the aging and long-term
11 support administration of the department.

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

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

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

1 (~~(f)~~) (g) When a defendant is ordered to be evaluated under
2 this 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 (h) If the defendant ordered to be evaluated under this
16 subsection (1) is charged with a serious traffic offense under RCW
17 9.94A.030, or a felony version of a serious traffic offense, the
18 prosecutor may make a motion to modify the defendant's conditions of
19 release to include a condition prohibiting the defendant from driving
20 during the pendency of the competency evaluation period.

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

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

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

33 (b) A diagnosis or description of the current mental status of
34 the defendant;

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

37 (d) If the defendant suffers from an intellectual or
38 developmental disability, traumatic brain injury, or dementia, an
39 opinion as to restorability;

1 (e) If the defendant has indicated his or her intention to rely
2 on the defense of insanity pursuant to RCW 10.77.030, and an
3 evaluation and report by an expert or professional person has been
4 provided concluding that the defendant was criminally insane at the
5 time of the alleged offense, an opinion as to the defendant's sanity
6 at the time of the act, and an opinion as to whether the defendant
7 presents a substantial danger to other persons, or presents a
8 substantial likelihood of committing criminal acts jeopardizing
9 public safety or security, unless kept under further control by the
10 court or other persons or institutions, provided that no opinion
11 shall be rendered under this subsection (3) ~~((d))~~ (e) unless the
12 evaluator or court determines that the defendant is competent to
13 stand trial;

14 ~~((e))~~ (f) When directed by the court, if an evaluation and
15 report by an expert or professional person has been provided
16 concluding that the defendant lacked the capacity at the time of the
17 offense to form the mental state necessary to commit the charged
18 offense, an opinion as to the capacity of the defendant to have a
19 particular state of mind which is an element of the offense charged;

20 ~~((f))~~ (g) An opinion as to whether the defendant should be
21 evaluated by a designated crisis responder under chapter 71.05 RCW.

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

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

35 (6) If a finding of the competency evaluation under this section
36 or under RCW 10.77.084 is that the individual is not competent due to
37 an intellectual or developmental disability, dementia, or traumatic
38 brain injury, the evaluator shall notify the department, which shall
39 refer the individual to the developmental disabilities administration
40 or the aging and long-term support administration of the department

1 for review of eligibility for services. Information about
2 availability of services must be provided to the forensic navigator.

3 (7) If the expert or professional person appointed to perform a
4 competency evaluation in the community is not able to complete the
5 evaluation after two attempts at scheduling with the defendant, the
6 department shall submit a report to the court and parties and include
7 a date and time for another evaluation which must be at least four
8 weeks later. The court shall provide notice to the defendant of the
9 date and time of the evaluation. If the defendant fails to appear at
10 that appointment, the court shall issue a warrant for the failure to
11 appear and recall the order for competency evaluation.

12 **Sec. 4.** RCW 10.77.068 and 2022 c 288 s 3 are each amended to
13 read as follows:

14 (1)(a) The legislature establishes a performance target of seven
15 days or fewer to extend an offer of admission to a defendant in
16 pretrial custody for inpatient competency evaluation or inpatient
17 competency restoration services, when access to the services is
18 legally authorized.

19 (b) The legislature establishes a performance target of 14 days
20 or fewer for the following services related to competency to stand
21 trial, when access to the services is legally authorized:

22 (i) To complete a competency evaluation in jail and distribute
23 the evaluation report; and

24 (ii) To extend an offer of admission to a defendant ordered to be
25 committed to ~~((a state hospital))~~ the department for placement in a
26 facility operated by or contracted by the department following
27 dismissal of charges based on incompetency to stand trial under RCW
28 10.77.086.

29 (c) The legislature establishes a performance target of 21 days
30 or fewer to complete a competency evaluation in the community and
31 distribute the evaluation report.

32 (2)(a) A maximum time limit of seven days as measured from the
33 department's receipt of the court order, or a maximum time limit of
34 14 days as measured from signature of the court order, whichever is
35 shorter, is established to complete the services specified in
36 subsection (1)(a) of this section, subject to the limitations under
37 subsection (9) of this section.

38 (b) A maximum time limit of 14 days as measured from the
39 department's receipt of the court order, or a maximum time limit of

1 21 days as measured from signature of the court order, whichever is
2 shorter, is established to complete the services specified in
3 subsection (1)(b) of this section, subject to the limitations under
4 subsection (9) of this section.

5 (3) The legislature recognizes that these targets may not be
6 achievable in all cases, but intends for the department to manage,
7 allocate, and request appropriations for resources in order to meet
8 these targets whenever possible without sacrificing the accuracy and
9 quality of competency services.

10 (4) It shall be a defense to an allegation that the department
11 has exceeded the maximum time limits for completion of competency
12 services described in subsection (2) of this section if the
13 department can demonstrate by a preponderance of the evidence that
14 the reason for exceeding the maximum time limits was outside of the
15 department's control including, but not limited to, the following
16 circumstances:

17 (a) Despite a timely request, the department has not received
18 necessary medical information regarding the current medical status of
19 a defendant;

20 (b) The individual circumstances of the defendant make accurate
21 completion of an evaluation of competency to stand trial dependent
22 upon review of mental health, substance use disorder, or medical
23 history information which is in the custody of a third party and
24 cannot be immediately obtained by the department, provided that
25 completion shall not be postponed for procurement of information
26 which is merely supplementary;

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

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

32 (e) Completion of the referral requires additional time to
33 accommodate the availability or participation of counsel, court
34 personnel, interpreters, or the defendant;

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

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

1 (5) The department shall provide written notice to the court when
2 it will not be able to meet the maximum time limits under subsection
3 (2) of this section and identify the reasons for the delay and
4 provide a reasonable estimate of the time necessary to complete the
5 competency service. Good cause for an extension for the additional
6 time estimated by the department shall be presumed absent a written
7 response from the court or a party received by the department within
8 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 (7) Following any quarter in which a state hospital has failed to
24 meet one or more of the performance targets or maximum time limits
25 under subsection (1) or (2) of this section, the department shall
26 report to the executive and the legislature the extent of this
27 deviation and describe any corrective action being taken to improve
28 performance. This report shall be made publicly available. An average
29 may be used to determine timeliness under this subsection.

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

37 (9) This section does not create any new entitlement or cause of
38 action related to the timeliness of competency to stand trial
39 services, nor can it form the basis for contempt sanctions under
40 chapter 7.21 RCW or a motion to dismiss criminal charges.

1 **Sec. 5.** RCW 10.77.074 and 2019 c 326 s 2 are each amended to
2 read as follows:

3 (1) Subject to the limitations described in subsection (2) of
4 this section, a court may appoint an impartial forensic navigator
5 employed by or contracted by the department to assist individuals who
6 have been referred for competency evaluation and shall appoint a
7 forensic navigator in circumstances described under section 10 of
8 this act.

9 (2) A forensic navigator must assist the individual to access
10 services related to diversion and community outpatient competency
11 restoration. The forensic navigator must assist the individual,
12 prosecuting attorney, defense attorney, and the court to understand
13 the options available to the individual and be accountable as an
14 officer of the court for faithful execution of the responsibilities
15 outlined in this section.

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

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

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

23 (c) To assess the individual for appropriateness for assisted
24 outpatient treatment under chapter 71.05 RCW;

25 (d) To present information to the court in order to assist the
26 court in understanding the treatment options available to the
27 individual to support the entry of orders for diversion from the
28 forensic mental health system or for community outpatient competency
29 restoration, ~~((and))~~ to facilitate that transition; ~~((and~~

30 ~~-d-))~~ (e) To provide regular updates to the court and parties of
31 the status of the individual's participation in diversion services
32 and be responsive to inquiries by the parties about treatment status;

33 (f) When the individual is ordered to receive community
34 outpatient restoration, to provide services to the individual
35 including:

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

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

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

1 (iv) Providing information to the court concerning the
2 individual's progress and compliance with court-ordered conditions of
3 release, which may include appearing at court hearings to provide
4 information to the court;

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

7 (vi) Assisting the individual with obtaining prescribed
8 medication and encouraging adherence with prescribed medication;

9 (vii) Assessing the individual for appropriateness for assisted
10 outpatient treatment under chapter 71.05 RCW and coordinating the
11 initiation of an assisted outpatient treatment order if appropriate
12 as part of a diversion program plan;

13 (viii) Planning for a coordinated transition of the individual to
14 a case manager in the community behavioral health system;

15 ~~((viii))~~ (ix) Attempting to follow-up with the individual to
16 check whether the meeting with a community-based case manager took
17 place;

18 ~~((ix))~~ (x) When the individual is a high utilizer, attempting
19 to connect the individual with high utilizer services; and

20 ~~((x))~~ (xi) Attempting to check up on the individual at least
21 once per month for up to sixty days after coordinated transition to
22 community behavioral health services, without duplicating the
23 services of the community-based case manager;

24 (g) If the individual is an American Indian or Alaska Native who
25 receives medical, behavioral health, housing, or other supportive
26 services from a tribe within this state, to notify and coordinate
27 with the tribe and Indian health care provider. Notification shall be
28 made in person or by telephonic or electronic communication to the
29 tribal contact listed in the authority's tribal crisis coordination
30 plan as soon as possible.

31 (4) Forensic navigators may submit ~~((nonclinical))~~
32 recommendations to the court regarding treatment and restoration
33 options for the individual, which the court may consider and weigh in
34 conjunction with the recommendations of all of the parties.

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

37 (6) The signed order for competency evaluation from the court
38 shall serve as authority for the forensic navigator to be given
39 access to all records held by a behavioral health, educational, or
40 law enforcement agency or a correctional facility that relates to an

1 individual. Information that is protected by state or federal law,
2 including health information, shall not be entered into the court
3 record without the consent of the individual or their defense
4 attorney.

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

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

12 **Sec. 6.** RCW 10.77.084 and 2016 sp.s. c 29 s 410 are each amended
13 to read as follows:

14 (1)(a) If at any time during the pendency of an action and prior
15 to judgment the court finds, following a report as provided in RCW
16 10.77.060, a defendant is incompetent, the court shall order the
17 proceedings against the defendant be stayed except as provided in
18 subsection (4) of this section. Beginning October 1, 2023, if the
19 defendant is charged with a serious traffic offense under RCW
20 9.94A.030, or a felony version of a serious traffic offense, the
21 court may order the clerk to transmit an order to the department of
22 licensing for revocation of the defendant's driver's license for a
23 period of one year.

24 (b) The court may order a defendant who has been found to be
25 incompetent to undergo competency restoration treatment at a facility
26 designated by the department if the defendant is eligible under RCW
27 10.77.086 or 10.77.088. At the end of each competency restoration
28 period or at any time a professional person determines competency has
29 been, or is unlikely to be, restored, the defendant shall be returned
30 to court for a hearing, except that if the opinion of the
31 professional person is that the defendant remains incompetent and the
32 hearing is held before the expiration of the current competency
33 restoration period, the parties may agree to waive the defendant's
34 presence, to remote participation by the defendant at a hearing, or
35 to presentation of an agreed order in lieu of a hearing. The facility
36 shall promptly notify the court and all parties of the date on which
37 the competency restoration period commences and expires so that a
38 timely hearing date may be scheduled.

1 (c) The court's order for inpatient restoration, shall specify
2 whether the department has the authority to change the defendant's
3 placement to a step-down facility or outpatient competency
4 restoration program if the department determines that such placement
5 is clinically appropriate given the defendant's progress in
6 restoration services.

7 (d) If, following notice and hearing or entry of an agreed order
8 under (b) of this subsection, the court finds that competency has
9 been restored, the court shall lift the stay entered under (a) of
10 this subsection. If the court finds that competency has not been
11 restored, the court shall dismiss the proceedings without prejudice,
12 except that the court may order a further period of competency
13 restoration treatment if it finds that further treatment within the
14 time limits established by RCW 10.77.086 or 10.77.088 is likely to
15 restore competency, and a further period of treatment is allowed
16 under RCW 10.77.086 or 10.77.088.

17 ~~((d))~~ (e) If at any time during the proceeding the court finds,
18 following notice and hearing, a defendant is not likely to regain
19 competency, the court shall dismiss the proceedings without prejudice
20 and refer the defendant for civil commitment evaluation or
21 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
22 10.77.088.

23 (f) Beginning October 1, 2023, if the court issues an order
24 directing revocation of the defendant's driver's license under (a) of
25 this subsection, and the court subsequently finds that the
26 defendant's competency has been restored, the court shall order the
27 clerk to transmit an order to the department of licensing for
28 reinstatement of the defendant's driver's license. The court may
29 direct the clerk to transmit an order reinstating the defendant's
30 driver's license before the end of one year for good cause upon the
31 petition of the defendant.

32 (2) If the defendant is referred for evaluation by a designated
33 crisis responder under this chapter, the designated crisis responder
34 shall provide prompt written notification of the results of the
35 evaluation and whether the person was detained. The notification
36 shall be provided to the court in which the criminal action was
37 pending, the prosecutor, the defense attorney in the criminal action,
38 and the facility that evaluated the defendant for competency.

1 (3) The fact that the defendant is unfit to proceed does not
2 preclude any pretrial proceedings which do not require the personal
3 participation of the defendant.

4 (4) A defendant receiving medication for either physical or
5 mental problems shall not be prohibited from standing trial, if the
6 medication either enables the defendant to understand the proceedings
7 against him or her and to assist in his or her own defense, or does
8 not disable him or her from so understanding and assisting in his or
9 her own defense.

10 (5) At or before the conclusion of any commitment period provided
11 for by this section, the facility providing evaluation and treatment
12 shall provide to the court a written report of evaluation which meets
13 the requirements of RCW 10.77.060(3). For defendants charged with a
14 felony, the report following the second competency restoration period
15 or first competency restoration period if the defendant's
16 incompetence is determined to be solely due to a developmental
17 disability or the evaluator concludes that the defendant is not
18 likely to regain competency must include an assessment of the
19 defendant's future dangerousness which is evidence-based regarding
20 predictive validity.

21 **Sec. 7.** RCW 10.77.086 and 2022 c 288 s 4 are each amended to
22 read as follows:

23 (1) If the defendant is charged with a felony and determined to
24 be incompetent, until he or she has regained the competency necessary
25 to understand the proceedings against him or her and assist in his or
26 her own defense, but in any event for a period of no longer than 90
27 days, the court shall commit the defendant to the custody of the
28 secretary for inpatient competency restoration, or may alternatively
29 order the defendant to receive outpatient competency restoration
30 based on a recommendation from a forensic navigator and input from
31 the parties.

32 (a) To be eligible for an order for outpatient competency
33 restoration, a defendant must be clinically appropriate and be
34 willing to:

35 (i) Adhere to medications or receive prescribed intramuscular
36 medication;

37 (ii) Abstain from alcohol and unprescribed drugs; and

38 (iii) Comply with urinalysis or breathalyzer monitoring if
39 needed.

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

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

17 (d) If a defendant fails to comply with the restrictions of the
18 outpatient restoration program such that restoration is no longer
19 appropriate in that setting or the defendant is no longer clinically
20 appropriate for outpatient competency restoration, the director of
21 the outpatient competency restoration program shall notify the
22 authority and the department of the need to terminate the outpatient
23 competency restoration placement and intent to request placement for
24 the defendant in an appropriate facility of the department for
25 inpatient competency restoration. The outpatient competency
26 restoration program shall coordinate with the authority, the
27 department, and any law enforcement personnel under (d)(i) of this
28 subsection to ensure that the time period between termination and
29 admission into the inpatient facility is as minimal as possible. The
30 time period for inpatient competency restoration shall be reduced by
31 the time period spent in active treatment within the outpatient
32 competency restoration program, excluding time periods in which the
33 defendant was absent from the program and all time from notice of
34 termination of the outpatient competency restoration period through
35 the defendant's admission to the facility. The department shall
36 obtain a placement for the defendant within seven days of the notice
37 of intent to terminate the outpatient competency restoration
38 placement.

39 (i) The department may authorize a peace officer to detain the
40 defendant into emergency custody for transport to the designated

1 inpatient competency restoration facility. If medical clearance is
2 required by the designated competency restoration facility before
3 admission, the peace officer must transport the defendant to a crisis
4 stabilization unit, evaluation and treatment facility, emergency
5 department of a local hospital, or triage facility for medical
6 clearance once a bed is available at the designated inpatient
7 competency restoration facility. The signed outpatient competency
8 restoration order of the court shall serve as authority for the
9 detention of the defendant under this subsection. This subsection
10 does not preclude voluntary transportation of the defendant to a
11 facility for inpatient competency restoration or for medical
12 clearance, or authorize admission of the defendant into jail.

13 (ii) The department shall notify the court and parties of the
14 defendant's admission for inpatient competency restoration before the
15 close of the next judicial day. The court shall schedule a hearing
16 within five days to review the conditions of release of the defendant
17 and anticipated release from treatment and issue appropriate orders.

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

24 (2) For a defendant whose highest charge is a class C felony, or
25 a class B felony that is not classified as violent under RCW
26 9.94A.030, the maximum time allowed for the initial competency
27 restoration period is 45 days if the defendant is referred for
28 inpatient competency restoration, or 90 days if the defendant is
29 referred for outpatient competency restoration, provided that if the
30 outpatient competency restoration placement is terminated and the
31 defendant is subsequently admitted to an inpatient facility, the
32 period of inpatient treatment during the first competency restoration
33 period under this subsection shall not exceed 45 days.

34 (3) If the court determines or the parties agree before the
35 initial competency restoration period or at any subsequent stage of
36 the proceedings that the defendant is unlikely to regain competency,
37 the court may dismiss the charges without prejudice without ordering
38 the defendant to undergo an initial or further period of competency
39 restoration treatment, in which case the court shall order that the

1 defendant be referred for evaluation for civil commitment in the
2 manner provided in subsection (5) of this section.

3 (4) On or before expiration of the initial competency restoration
4 period the court shall conduct a hearing to determine whether the
5 defendant is now competent to stand trial. If the court finds by a
6 preponderance of the evidence that the defendant is incompetent to
7 stand trial, the court may order an extension of the competency
8 restoration period for an additional period of 90 days, but the court
9 must at the same time set a date for a new hearing to determine the
10 defendant's competency to stand trial before the expiration of this
11 second restoration period. The defendant, the defendant's attorney,
12 and the prosecutor have the right to demand that the hearing be
13 before a jury. No extension shall be ordered for a second or third
14 competency restoration period if the defendant's incompetence has
15 been determined by the secretary to be solely the result of a
16 developmental disability which is such that competence is not
17 reasonably likely to be regained during an extension.

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

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

6 **Sec. 8.** RCW 10.77.086 and 2022 c 288 s 4 are each amended to
7 read as follows:

8 (1) If the defendant is charged with a felony that is not a
9 qualifying class C felony and determined to be incompetent, until he
10 or she has regained the competency necessary to understand the
11 proceedings against him or her and assist in his or her own defense,
12 but in any event for a period of no longer than 90 days, the court
13 shall commit the defendant to the custody of the secretary for
14 inpatient competency restoration, or may alternatively order the
15 defendant to receive outpatient competency restoration based on a
16 recommendation from a forensic navigator and input from the parties.

17 (2)(a) If the defendant is charged with a qualifying class C
18 felony as their highest charge and determined to be incompetent, and
19 the court finds that there is a diversion program available to accept
20 the defendant as recommended by a forensic navigator, the court shall
21 dismiss the proceedings without prejudice and refer the defendant to
22 the recommended diversion program, except that if the court has
23 previously determined that a diversion program under section 10 of
24 this act is not appropriate, the forensic navigator does not
25 recommend diversion, or the prosecutor objects to the dismissal and
26 provides notice of a motion for an order for competency restoration
27 treatment, then the court shall schedule a hearing within seven days.

28 (b)(i) At the hearing, the prosecuting attorney must establish
29 that there is a compelling state interest to order competency
30 restoration treatment for the defendant. The court may consider prior
31 criminal history, prior history in treatment, prior history of
32 violence, the quality and severity of the pending charges, and any
33 history that suggests whether competency restoration treatment is
34 likely to be successful, in addition to the factors listed under RCW
35 10.77.092. If the prosecuting attorney proves by a preponderance of
36 the evidence that there is a compelling state interest in ordering
37 competency restoration treatment, then the court shall issue an order
38 in accordance with (c) of this subsection.

1 (ii) If the defendant is subject to an order under chapter 71.05
2 RCW or proceedings under chapter 71.05 RCW have been initiated, there
3 is a rebuttable presumption that there is no compelling state
4 interest in ordering competency restoration treatment. Beginning
5 October 1, 2023, if the defendant is charged with a serious traffic
6 offense under RCW 9.94A.030, or a felony version of a serious traffic
7 offense, the court may order the clerk to transmit an order to the
8 department of licensing for revocation of the defendant's driver's
9 license for a period of one year. The court shall direct the clerk to
10 transmit an order to the department of licensing reinstating the
11 defendant's driver's license if the defendant is subsequently
12 restored to competency and may do so at any time before the end of
13 one year for good cause upon the petition of the defendant.

14 (c) If a court finds pursuant to (b) of this subsection that
15 there is a compelling state interest in pursuing competency
16 restoration treatment or the court has previously determined that a
17 diversion program under section 10 of this act is not appropriate for
18 the defendant, the court shall order the defendant to receive
19 outpatient competency restoration consistent with the recommendation
20 of the forensic navigator, unless the court finds that an order for
21 outpatient competency restoration is inappropriate considering the
22 health and safety of the defendant and risks to public safety. If the
23 court does not order the defendant to receive outpatient competency
24 restoration, the court shall commit the defendant to the department
25 for placement in a facility operated or contracted by the department
26 for inpatient competency restoration.

27 (3)(a) To be eligible for an order for outpatient competency
28 restoration, a defendant must be clinically appropriate and be
29 willing to:

30 (i) Adhere to medications or receive prescribed intramuscular
31 medication;

32 (ii) Abstain from alcohol and unprescribed drugs; and

33 (iii) Comply with urinalysis or breathalyzer monitoring if
34 needed.

35 (b) If the court orders inpatient competency restoration, the
36 department shall place the defendant in an appropriate facility of
37 the department for competency restoration.

38 (c) If the court orders outpatient competency restoration, the
39 court shall modify conditions of release as needed to authorize the
40 department to place the person in approved housing, which may include

1 access to supported housing, affiliated with a contracted outpatient
2 competency restoration program. The department, in conjunction with
3 the health care authority, must establish rules for conditions of
4 participation in the outpatient competency restoration program, which
5 must include the defendant being subject to medication management.
6 The court may order regular urinalysis testing. The outpatient
7 competency restoration program shall monitor the defendant during the
8 defendant's placement in the program and report any noncompliance or
9 significant changes with respect to the defendant to the department
10 and, if applicable, the forensic navigator.

11 (d) If a defendant fails to comply with the restrictions of the
12 outpatient restoration program such that restoration is no longer
13 appropriate in that setting or the defendant is no longer clinically
14 appropriate for outpatient competency restoration, the director of
15 the outpatient competency restoration program shall notify the
16 authority and the department of the need to terminate the outpatient
17 competency restoration placement and intent to request placement for
18 the defendant in an appropriate facility of the department for
19 inpatient competency restoration. The outpatient competency
20 restoration program shall coordinate with the authority, the
21 department, and any law enforcement personnel under (d)(i) of this
22 subsection to ensure that the time period between termination and
23 admission into the inpatient facility is as minimal as possible. The
24 time period for inpatient competency restoration shall be reduced by
25 the time period spent in active treatment within the outpatient
26 competency restoration program, excluding time periods in which the
27 defendant was absent from the program and all time from notice of
28 termination of the outpatient competency restoration period through
29 the defendant's admission to the facility. The department shall
30 obtain a placement for the defendant within seven days of the notice
31 of intent to terminate the outpatient competency restoration
32 placement.

33 (i) The department may authorize a peace officer to detain the
34 defendant into emergency custody for transport to the designated
35 inpatient competency restoration facility. If medical clearance is
36 required by the designated competency restoration facility before
37 admission, the peace officer must transport the defendant to a crisis
38 stabilization unit, evaluation and treatment facility, emergency
39 department of a local hospital, or triage facility for medical
40 clearance once a bed is available at the designated inpatient

1 competency restoration facility. The signed outpatient competency
2 restoration order of the court shall serve as authority for the
3 detention of the defendant under this subsection. This subsection
4 does not preclude voluntary transportation of the defendant to a
5 facility for inpatient competency restoration or for medical
6 clearance, or authorize admission of the defendant into jail.

7 (ii) The department shall notify the court and parties of the
8 defendant's admission for inpatient competency restoration before the
9 close of the next judicial day. The court shall schedule a hearing
10 within five days to review the conditions of release of the defendant
11 and anticipated release from treatment and issue appropriate orders.

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

18 ~~((+2))~~ (4) (a) For a defendant whose highest charge is a class C
19 felony that is not a qualifying class C felony, or a class B felony
20 that is not classified as violent under RCW 9.94A.030, the maximum
21 time allowed for the initial competency restoration period is 45 days
22 if the defendant is referred for inpatient competency restoration, or
23 90 days if the defendant is referred for outpatient competency
24 restoration, provided that if the outpatient competency restoration
25 placement is terminated and the defendant is subsequently admitted to
26 an inpatient facility, the period of inpatient treatment during the
27 first competency restoration period under this subsection shall not
28 exceed 45 days.

29 ~~((+3))~~ (b) For a defendant whose highest charge is a qualifying
30 class C felony, the maximum time allowed for competency restoration
31 is 45 days if the defendant is referred for inpatient competency
32 restoration, or 90 days if the defendant is referred for outpatient
33 competency restoration. The court may order any combination of
34 inpatient and outpatient competency restoration under this
35 subsection, but the total period of inpatient competency restoration
36 may not exceed 45 days.

37 (c) For any defendant with a felony charge that is admitted for
38 competency restoration with an accompanying court order for
39 involuntary medication under RCW 10.77.092, and the defendant is
40 found not competent to stand trial following that period of

1 restoration, charges shall be dismissed pursuant to subsection (7) of
2 this section.

3 (5) If the court determines or the parties agree before the
4 initial competency restoration period or at any subsequent stage of
5 the proceedings that the defendant is unlikely to regain competency,
6 the court may dismiss the charges without prejudice without ordering
7 the defendant to undergo an initial or further period of competency
8 restoration treatment, in which case the court shall order that the
9 defendant be referred for evaluation for civil commitment in the
10 manner provided in subsection ~~((5))~~ (7) of this section.

11 ~~((4) or)~~ (6) For a defendant charged with a felony that is not
12 a qualifying class C felony, on or before expiration of the initial
13 competency restoration period the court shall conduct a hearing to
14 determine whether the defendant is now competent to stand trial. If
15 the court finds by a preponderance of the evidence that the defendant
16 is incompetent to stand trial, the court may order an extension of
17 the competency restoration period for an additional period of 90
18 days, but the court must at the same time set a date for a new
19 hearing to determine the defendant's competency to stand trial before
20 the expiration of this second restoration period. The defendant, the
21 defendant's attorney, and the prosecutor have the right to demand
22 that the hearing be before a jury. No extension shall be ordered for
23 a second or third competency restoration period if the defendant's
24 incompetence has been determined by the secretary to be solely the
25 result of ((a)) an intellectual or developmental disability,
26 dementia, or traumatic brain injury which is such that competence is
27 not reasonably likely to be regained during an extension.

28 ~~((5) At)~~ (7)(a) Except as provided in (b) of this subsection,
29 at the hearing upon the expiration of the second competency
30 restoration period, or at the end of the first competency restoration
31 period if the defendant is ineligible for a second or third
32 competency restoration period under subsection (4) or (6) of this
33 section, if the jury or court finds that the defendant is incompetent
34 to stand trial, the court shall dismiss the charges without prejudice
35 and order the defendant to be committed to ~~((a state hospital))~~ the
36 department for placement in a facility operated or contracted by the
37 department for up to 120 hours if the defendant has not undergone
38 competency restoration services or has engaged in outpatient
39 competency restoration services, and up to 72 hours if the defendant
40 engaged in inpatient competency restoration services starting from

1 admission to the facility, excluding Saturdays, Sundays, and
2 holidays, for evaluation for the purpose of filing a civil commitment
3 petition under chapter 71.05 RCW. (~~However,~~) If at the time the
4 order to dismiss the charges without prejudice is entered by the
5 court the defendant is already in a facility operated or contracted
6 by the department, the 72-hour or 120-hour period shall instead begin
7 upon department receipt of the court order.

8 (b) For a defendant charged with a felony that is not a
9 qualifying class C felony, the court shall not dismiss the charges if
10 the court or jury finds that: (~~(a)~~) (i) The defendant (~~(i)~~) (A)
11 is a substantial danger to other persons; or (~~(ii)~~) (B) presents a
12 substantial likelihood of committing criminal acts jeopardizing
13 public safety or security; and (~~(b)~~) (ii) there is a substantial
14 probability that the defendant will regain competency within a
15 reasonable period of time. If the court or jury makes such a finding,
16 the court may extend the period of commitment for up to an additional
17 six months.

18 (~~(6)~~) (8) Any period of competency restoration treatment under
19 this section includes only the time the defendant is actually at the
20 facility or is actively participating in an outpatient competency
21 restoration program and is in addition to reasonable time for
22 transport to or from the facility.

23 (9) "Qualifying class C felony" means any class C felony offense
24 except: (a) Assault in the third degree under RCW 9A.36.031(1) (d) or
25 (f); (b) felony physical control of a vehicle under RCW 46.61.504(6);
26 (c) felony hit and run resulting in injury under RCW 46.52.020(4) (b);
27 (d) hate crime offense under RCW 9A.36.080; (e) any class C felony
28 offense with a domestic violence designation; (f) any class C felony
29 sex offense as defined in RCW 9.94A.030; and (g) any class C felony
30 offense with a sexual motivation allegation.

31 **Sec. 9.** RCW 10.77.088 and 2022 c 288 s 5 are each amended to
32 read as follows:

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

36 (a) Shall dismiss the proceedings without prejudice and detain
37 the defendant (~~(for sufficient time to allow the designated crisis~~
38 ~~responder to evaluate the defendant and consider initial detention~~
39 ~~proceedings under chapter 71.05 RCW)) pursuant to subsection (5) of~~

1 this section, unless the prosecutor objects to the dismissal and
2 provides notice of a motion for an order for competency restoration
3 treatment, in which case the court shall schedule a hearing within
4 seven days.

5 (b) (i) At the hearing, the prosecuting attorney must establish
6 that there is a compelling state interest to order competency
7 restoration treatment for the defendant. The court may consider prior
8 criminal history, prior history in treatment, prior history of
9 violence, the quality and severity of the pending charges, any
10 history that suggests whether competency restoration treatment is
11 likely to be successful, in addition to the factors listed under RCW
12 10.77.092. If the prosecuting attorney proves by a preponderance of
13 the evidence that there is a compelling state interest in ordering
14 competency restoration treatment, then the court shall issue an order
15 in accordance with subsection (2) of this section.

16 (ii) If the defendant is subject to an order under chapter 71.05
17 RCW or proceedings under chapter 71.05 RCW have been initiated, there
18 is a rebuttable presumption that there is no compelling state
19 interest in ordering competency restoration treatment. Beginning
20 October 1, 2023, if the defendant is charged with a serious traffic
21 offense under RCW 9.94A.030, the court may order the clerk to
22 transmit an order to the department of licensing for revocation of
23 the defendant's driver's license for a period of one year. The court
24 shall direct the clerk to transmit an order to the department of
25 licensing reinstating the defendant's driver's license if the
26 defendant is subsequently restored to competency, and may do so at
27 any time before the end of one year for good cause upon the petition
28 of the defendant.

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

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

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

6 (ii) Abstain from alcohol and unprescribed drugs; and

7 (iii) Comply with urinalysis or breathalyzer monitoring if
8 needed.

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

13 ~~((e))~~ (d) 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. The court may order regular urinalysis
22 testing. The outpatient competency restoration program shall monitor
23 the defendant during the defendant's placement in the program and
24 report any noncompliance or significant changes with respect to the
25 defendant to the department and, if applicable, the forensic
26 navigator.

27 ~~((d))~~ (e) If a defendant fails to comply with the restrictions
28 of the outpatient competency restoration program such that
29 restoration is no longer appropriate in that setting or the defendant
30 is no longer clinically appropriate for outpatient competency
31 restoration, the director of the outpatient competency restoration
32 program shall notify the authority and the department of the need to
33 terminate the outpatient competency restoration placement and intent
34 to request placement for the defendant in an appropriate facility of
35 the department for inpatient competency restoration. The outpatient
36 competency restoration program shall coordinate with the authority,
37 the department, and any law enforcement personnel under ~~((d))~~ (e)

38 (i) of this subsection to ensure that the time period between
39 termination and admission into the inpatient facility is as minimal
40 as possible. The time period for inpatient competency restoration

1 shall be reduced by the time period spent in active treatment within
2 the outpatient competency restoration program, excluding time periods
3 in which the defendant was absent from the program and all time from
4 notice of termination of the outpatient competency restoration period
5 through the defendant's admission to the facility. The department
6 shall obtain a placement for the defendant within seven days of the
7 notice of intent to terminate the outpatient competency restoration
8 placement.

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

23 (ii) The department shall notify the court and parties of the
24 defendant's admission for inpatient competency restoration before the
25 close of the next judicial day. The court shall schedule a hearing
26 within five days to review the conditions of release of the defendant
27 and anticipated release from treatment and issue appropriate orders.

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

34 (g) If the court does not order the defendant to receive
35 outpatient competency restoration under (a) of this subsection, the
36 court shall commit the defendant to the department for placement in a
37 facility operated or contracted by the department for inpatient
38 competency restoration.

39 (3) The placement under subsection (2) of this section shall not
40 exceed 29 days if the defendant is ordered to receive inpatient

1 competency restoration, and shall not exceed 90 days if the defendant
2 is ordered to receive outpatient competency restoration. The court
3 may order any combination of this subsection, but the total period of
4 inpatient competency restoration may not exceed 29 days.

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

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

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

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

37 (7) If at any time the court dismisses charges under subsections
38 (1) through (6) of this section, the court shall make a finding as to
39 whether the defendant has a history of one or more violent acts. If
40 the court so finds, the defendant is barred from the possession of

1 firearms until a court restores his or her right to possess a firearm
2 under RCW 9.41.047. The court shall state to the defendant and
3 provide written notice that the defendant is barred from the
4 possession of firearms and that the prohibition remains in effect
5 until a court restores his or her right to possess a firearm under
6 RCW 9.41.047.

7 (8) Any period of competency restoration treatment under this
8 section includes only the time the defendant is actually at the
9 facility or is actively participating in an outpatient competency
10 restoration program and is in addition to reasonable time for
11 transport to or from the facility.

12 NEW SECTION. **Sec. 10.** A new section is added to chapter 10.77
13 RCW to read as follows:

14 (1) In counties with a forensic navigator program, a forensic
15 navigator shall:

16 (a) Meet, interview, and observe all defendants charged with a
17 qualifying class C felony as defined in RCW 10.77.086(9) or a
18 nonfelony who have had two or more competency evaluations in the
19 preceding 24 months on separate charges or cause numbers and
20 determine the defendants' willingness to engage with services under
21 this section; and

22 (b) Provide a diversion program plan to the parties in each case
23 that includes a recommendation for a diversion program to defense
24 counsel and the prosecuting attorney. Services under a diversion
25 program may include a referral for assisted outpatient treatment
26 under chapter 71.05 RCW.

27 (2) If the parties agree on the diversion program recommended by
28 the forensic navigator, the prosecutor shall request dismissal of the
29 criminal charges.

30 (3) If the parties do not agree on the diversion program, the
31 defense may move the court for an order dismissing the criminal
32 charges without prejudice and referring the defendant to the services
33 described in the diversion program. The court shall hold a hearing on
34 this motion within 10 days. The court shall grant the defense motion
35 if it finds by a preponderance of the evidence that the defendant is
36 amenable to the services described in the diversion program and can
37 safely receive services in the community.

38 (4) Individuals who receive a dismissal of charges and referral
39 to services described in a diversion program shall have a forensic

1 navigator assigned to assist them for up to six months while engaging
2 in the services described in the diversion program. The forensic
3 navigator shall provide monthly status updates to the court and the
4 parties regarding the individual's status in the diversion program.

5 (5) Forensic navigators shall collaborate with available
6 *Trueblood* settlement diversion programs if they are accessible in the
7 geographic location where criminal charges are currently filed.

8 **Sec. 11.** RCW 10.77.092 and 2014 c 10 s 2 are each amended to
9 read as follows:

10 (1) For purposes of determining whether a court may authorize
11 involuntary medication for the purpose of competency restoration
12 pursuant to RCW 10.77.084 and for maintaining the level of
13 restoration in the jail following the restoration period, a pending
14 charge involving any one or more of the following crimes is a serious
15 offense per se in the context of competency restoration:

16 (a) Any violent offense, sex offense, (~~serious—traffice~~
17 ~~offense,~~) and most serious offense, as those terms are defined in
18 RCW 9.94A.030;

19 (b) Any felony offense (~~(, —except—nonfelony—counterfeiting~~
20 ~~offenses,~~) included in crimes against persons in RCW 9.94A.411;

21 (c) Any felony offense contained in chapter 9.41 RCW (firearms
22 and dangerous weapons);

23 (d) Any felony or gross misdemeanor offense listed as domestic
24 violence in RCW 10.99.020;

25 (e) Any felony offense listed as a harassment offense in chapter
26 9A.46 RCW;

27 (f) Any violation of chapter 69.50 RCW that is a class B felony;
28 (~~or~~)

29 (g) Any gross misdemeanor violation of RCW 46.61.502 or
30 46.61.504;

31 (h) Any gross misdemeanor offense with a sexual motivation
32 allegation; or

33 (i) Any city or county ordinance or statute that is equivalent to
34 an offense referenced in this subsection.

35 (2) Anytime the secretary seeks a court order authorizing the
36 involuntary medication for purposes of competency restoration
37 pursuant to RCW 10.77.084, the secretary's petition must also seek
38 authorization to continue involuntary medication for purposes of

1 maintaining the level of restoration in the jail or juvenile
2 detention facility following the restoration period.

3 (3)(a) In a particular case, a court may determine that a pending
4 charge not otherwise defined as serious by state or federal law or by
5 a city or county ordinance is, nevertheless, a serious offense within
6 the context of competency restoration treatment when the conduct in
7 the charged offense falls within the standards established in (b) of
8 this subsection.

9 (b) To determine that the particular case is a serious offense
10 within the context of competency restoration, the court must consider
11 the following factors and determine that one or more of the following
12 factors creates a situation in which the offense is serious:

13 (i) The charge includes an allegation that the defendant actually
14 inflicted bodily or emotional harm on another person or that the
15 defendant created a reasonable apprehension of bodily or emotional
16 harm to another;

17 (ii) The extent of the impact of the alleged offense on the basic
18 human need for security of the citizens within the jurisdiction;

19 (iii) The number and nature of related charges pending against
20 the defendant;

21 (iv) The length of potential confinement if the defendant is
22 convicted; and

23 (v) The number of potential and actual victims or persons
24 impacted by the defendant's alleged acts.

25 NEW SECTION. Sec. 12. A new section is added to chapter 10.77
26 RCW to read as follows:

27 (1) When an individual has a prescription for an antipsychotic,
28 antidepressant, antiepileptic, or other drug prescribed to the
29 individual to treat a serious mental illness by a state hospital or
30 other state facility or a behavioral health agency or other certified
31 medical provider, and the individual is medically stable on the drug,
32 a jail or juvenile detention facility shall continue prescribing the
33 prescribed drug and may not require the substitution of a different
34 drug in a given therapeutic class, except under the following
35 circumstances:

36 (a) The substitution is for a generic version of a name brand
37 drug and the generic version is chemically identical to the name
38 brand drug; or

1 (b) The drug cannot be prescribed for reasons of drug recall or
2 removal from the market, or medical evidence indicating no
3 therapeutic effect of the drug.

4 (2) This section includes but is not limited to situations in
5 which the individual returns to a jail or juvenile detention facility
6 directly after undergoing treatment at a state hospital, behavioral
7 health agency, outpatient competency restoration program, or prison.

8 (3) The department shall establish a program to reimburse jails
9 and juvenile detention facilities for the costs of any drugs the jail
10 or juvenile detention facility does not otherwise have available and
11 must continue prescribing under this section.

12 NEW SECTION. **Sec. 13.** A new section is added to chapter 10.77
13 RCW to read as follows:

14 (1) Following a competency evaluation under RCW 10.77.060,
15 individuals who are found not competent to stand trial and not
16 restorable due to an intellectual or developmental disability,
17 dementia, or traumatic brain injury, shall not be referred for
18 competency restoration services unless the highest current criminal
19 charge is a violent offense or sex offense as defined in RCW
20 9.94A.030. A defendant with a prior finding under this subsection may
21 only be referred for competency restoration services if the highest
22 charge under the new proceedings is a violent offense or sex offense
23 as defined in RCW 9.94A.030.

24 (2) The department shall develop a process for connecting
25 individuals who have been found not competent to stand trial due to
26 an intellectual or developmental disability, dementia, or traumatic
27 brain injury to available wraparound services and supports, which may
28 include residential supports. The process shall include provisions
29 for individuals who are current clients of the department's
30 developmental disabilities administration or aging and long-term
31 support administration and for individuals who are not current
32 clients of the department.

33 (a) For current clients of the developmental disabilities
34 administration and aging and long-term support administration, the
35 department's assigned case manager shall:

36 (i) Coordinate with the individual's services providers to
37 determine if the individual can return to the same or like services,
38 or determine appropriate new services. This shall include updating
39 the individual's service plan and identifying and coordinating

1 potential funding for any additional supports to stabilize the
2 individual in any setting funded by the developmental disabilities
3 administration or aging and long-term support administration so that
4 the individual does not lose existing services, including submitting
5 any exceptions to rule for additional services;

6 (ii) Conduct a current service eligibility assessment and send
7 referral packets to all service providers for services for which the
8 individual is eligible; and

9 (iii) Connect with the individual's assigned forensic navigator
10 and determine if the individual is eligible for any diversion,
11 supportive housing, or case management programs as a *Trueblood* class
12 member, and assist the individual to access these services.

13 (b) For individuals who have not established eligibility for the
14 department's support services, the department shall:

15 (i) Conduct an eligibility determination for services and send
16 referral packets to service providers for all relevant services for
17 which the individual is eligible. This process must include
18 identifying and coordinating funding for any additional supports that
19 are needed to stabilize the individual in any setting funded by the
20 developmental disabilities administration or aging and long-term
21 support administration, including submitting any necessary exceptions
22 to rule for additional services; and

23 (ii) Connect with the individual's assigned forensic navigator
24 and determine if the individual is eligible for any diversion,
25 supportive housing, or case management programs as a *Trueblood* class
26 member, if additional specialized services are available to
27 supplement diversion program services, and assist the individual to
28 access these services.

29 (3) The department shall offer to transition the individual in
30 services either directly from the jail or as soon thereafter as may
31 be practicable, without maintaining the individual at an inpatient
32 facility for longer than is clinically necessary. Nothing in this
33 subsection prohibits the department from returning the individual to
34 their home or to another less restrictive setting if such setting is
35 appropriate, which may include provision of supportive services to
36 help the person maintain stability. The individual is not required to
37 accept developmental disabilities administration, aging and long-term
38 support administration, or other diversionary services as a condition
39 of having the individual's criminal case dismissed without prejudice,

1 provided the individual meets the criteria of subsection (1) of this
2 section.

3 (4) Subject to the availability of funds appropriated for this
4 specific purpose, the department shall develop a program for
5 individuals who have been involved with the criminal justice system
6 and who have been found under RCW 10.77.084 as incompetent to stand
7 trial and not restorable due to an intellectual or developmental
8 disability, traumatic brain injury, or dementia and who do not meet
9 criteria under other programs in this section. The program must
10 involve wraparound services and housing supports appropriate to the
11 needs of the individual. It is sufficient to meet the criteria for
12 participation in this program if the individual has recently been the
13 subject of criminal charges that were dismissed without prejudice and
14 was found incompetent to stand trial due to an intellectual or
15 developmental disability, traumatic brain injury, or dementia.

16 NEW SECTION. **Sec. 14.** The University of Washington shall
17 implement a pilot project to provide short-term stabilization and
18 transition support for individuals found incompetent to stand trial
19 due to an intellectual or developmental disability who are or have
20 been *Trueblood* class members. The project will be implemented in
21 three phases, beginning December 1, 2023, using an interdisciplinary
22 approach across various settings and overlapping with existing
23 resources, including those available to *Trueblood* class members and
24 services and supports they are eligible to receive from the
25 department of social and health services. The department of social
26 and health services shall collaborate with the University of
27 Washington on this project, including assistance in identifying
28 resources available to class members and determination of
29 eligibility. By November 30, 2026, the University of Washington shall
30 submit a report to the appropriate fiscal and policy committees of
31 the legislature on the pilot project, including the pilot project's
32 outcomes, data analysis, evaluation, and recommendations for
33 improvement. In addition, the University of Washington shall report
34 on the background of current and former *Trueblood* class members with
35 intellectual and developmental disabilities. The department of social
36 and health services shall share data as needed to assist in report
37 development.

1 NEW SECTION. **Sec. 15.** Subject to the availability of funds
2 appropriated for this specific purpose, the health care authority
3 shall require the programs it contracts with to increase compensation
4 for staff in outpatient competency restoration programs to provide
5 compensation at competitive levels to improve recruitment and allow
6 for the full implementation of outpatient competency restoration
7 programs.

8 NEW SECTION. **Sec. 16.** A new section is added to chapter 10.77
9 RCW to read as follows:

10 An outpatient competency restoration program must include access
11 to a prescriber.

12 NEW SECTION. **Sec. 17.** A new section is added to chapter 10.77
13 RCW to read as follows:

14 Subject to the security and background investigation requirements
15 of the jail, jails shall allow clinical intervention specialists to
16 have access to individuals who are referred to receive services under
17 this chapter and to all records relating to the health or conduct of
18 the individual while incarcerated. Clinical intervention specialists
19 shall support jail health services in providing direct services,
20 enhanced oversight and monitoring of the behavioral health status of
21 participating individuals. Clinical intervention specialists shall
22 work collaboratively with jail health services to ensure appropriate
23 prescriptions, medication compliance monitoring, and access to
24 supportive behavioral health services to the individuals. Clinical
25 intervention specialists shall coordinate with forensic navigators
26 and the department to assist forensic navigators in making
27 recommendations for appropriate placements, which may include
28 recommendations for participation in an outpatient competency
29 restoration program or a diversion program designed for the needs of
30 the individual. The clinical intervention specialist shall notify the
31 department if a participating individual appears to have stabilized
32 in their behavioral health such that a new competency evaluation is
33 appropriate to reassess the individual's need for competency
34 restoration treatment.

35 NEW SECTION. **Sec. 18.** A new section is added to chapter 10.77
36 RCW to read as follows:

1 The department shall collect data so that information can be
2 retrieved based on unique individuals, their complete Washington
3 criminal history and referrals for forensic services.

4 NEW SECTION. **Sec. 19.** A new section is added to chapter 10.77
5 RCW to read as follows:

6 (1) The department shall coordinate with cities, counties,
7 hospitals, and other public and private entities to identify
8 locations that may be commissioned or renovated for use in treating
9 clients committed to the department for competency evaluation,
10 competency restoration, civil conversion, or treatment following
11 acquittal by reason of insanity.

12 (2) The department may provide capital grants to entities to
13 accomplish the purposes described in subsection (1) of this section
14 subject to provision of funding provided for this specific purpose.

15 NEW SECTION. **Sec. 20.** (1) By January 2, 2024, the health care
16 authority shall implement a pilot project in phase one *Trueblood*
17 settlement regions, by creating three behavioral health crisis
18 systems regional coordinator positions in the Pierce, southwest, and
19 Spokane behavioral health administrative services organization
20 regions. The purpose of the pilot project is to support and assist
21 key participants across the various local voluntary, involuntary, and
22 forensic behavioral health systems to better understand the
23 intersection of these systems, their essential role in and across the
24 system, and how to effectively navigate impacted individuals to the
25 best options based on their circumstances and needs, including by
26 increasing the utilization of assisted outpatient treatment,
27 outpatient competency restoration services, and diversion programs
28 for people living with behavioral health conditions who are involved
29 or likely to have involvement with the criminal legal system.

30 (2) In carrying out this pilot project, the behavioral health
31 crisis systems regional coordinator shall familiarize themselves with
32 key cross-system participants within the region, including but not
33 limited to:

34 (a) Department of social and health services personnel and
35 contractors, including those implementing the responsibilities
36 outlined in chapter 10.77 RCW and Titles 71, 71A, and 74 RCW;

1 (b) Health care authority personnel and contractors, including
2 those implementing the responsibilities outlined in chapter 10.77 RCW
3 and Title 71 RCW;

4 (c) Behavioral health administrative services organization
5 personnel and contractors implementing the functions outlined in RCW
6 71.24.045;

7 (d) Managed care organizations, including personnel implementing
8 the responsibilities outlined in chapter 71.24 RCW and Title 74 RCW;

9 (e) Participants in the criminal legal system, including:
10 Municipal, district, and superior court personnel; prosecutors;
11 defense counsel representing people for whom there is a doubt as to
12 competency; law enforcement agency personnel; and municipal and
13 county jails;

14 (f) Local governments and tribal governments located within the
15 region; and

16 (g) Community-based wraparound service providers, including
17 housing and other supports for people involved in the behavioral
18 health or criminal legal systems.

19 (3) The behavioral health crisis systems regional coordinators
20 shall develop a robust understanding of the local voluntary,
21 involuntary, and forensic behavioral health systems within the county
22 or counties located within the behavioral health administrative
23 services organization's region, including all system actors,
24 policies, procedures, and programs across the state-operated and
25 regional behavioral health, criminal legal, local government, and
26 social services systems. The behavioral health crisis systems
27 regional coordinators shall also:

28 (a) Identify challenges within these systems and develop
29 strategies for improved coordination and access to services across
30 systems;

31 (b) Work with local jurisdictions and the behavioral health
32 administrative services organization, including the assisted
33 outpatient treatment program coordinator established in RCW
34 71.24.045, to establish or improve assisted outpatient treatment
35 programs, including increased utilization of assisted outpatient
36 treatment for expanded populations;

37 (c) Work with local jurisdictions and the behavioral health
38 administrative services organization to increase utilization of
39 arrest and jail diversion programs;

1 (d) Work with local jurisdictions and the behavioral health
2 administrative services organization to increase utilization of
3 outpatient competency restoration program services; and

4 (e) Provide recommendations on statutory and regulatory changes
5 needed to improve coordination and access to services across
6 behavioral health systems to the joint legislative and executive
7 committee on behavioral health established within the office of
8 financial management in the omnibus appropriations act for the
9 2023-2025 biennium.

10 (4) By September 30, 2025, the health care authority shall
11 provide a preliminary report to the appropriate fiscal and policy
12 committees of the legislature on the progress and outcomes of the
13 pilot project, including steps taken to address identified challenges
14 and improve coordination and access to behavioral health services
15 within each region, and steps taken to establish or improve access
16 to, and expanded utilization of, assisted outpatient treatment,
17 arrest and jail diversion program services, and outpatient competency
18 restoration program services within each region. The report shall
19 also include any recommended statutory changes that are needed to
20 facilitate improved coordination and access to services across
21 behavioral health systems. The authority shall submit a final report
22 by September 1, 2026.

23 (5) The health care authority, the department of social and
24 health services, and regional managed care organizations shall
25 provide the behavioral health crisis systems regional coordinators
26 with any information that supports the systems improvement work of
27 the behavioral health crisis systems regional coordinator.

28 (6) This section expires June 30, 2027.

29 **Sec. 21.** RCW 10.77.065 and 2019 c 325 s 5006 are each amended to
30 read as follows:

31 (1)(a)(i) The expert conducting the evaluation shall provide his
32 or her report and recommendation to the court in which the criminal
33 proceeding is pending. For a competency evaluation of a defendant who
34 is released from custody, if the evaluation cannot be completed
35 within twenty-one days due to a lack of cooperation by the defendant,
36 the evaluator shall notify the court that he or she is unable to
37 complete the evaluation because of such lack of cooperation.

38 (ii) A copy of the report and recommendation shall be provided to
39 the designated crisis responder, the prosecuting attorney, the

1 defense attorney, and the professional person at the local
2 correctional facility where the defendant is being held, or if there
3 is no professional person, to the person designated under (a)(iv) of
4 this subsection. Upon request, the evaluator shall also provide
5 copies of any source documents relevant to the evaluation to the
6 designated crisis responder.

7 (iii) Any facility providing inpatient services related to
8 competency shall discharge the defendant as soon as the facility
9 determines that the defendant is competent to stand trial. Discharge
10 shall not be postponed during the writing and distribution of the
11 evaluation report. Distribution of an evaluation report by a facility
12 providing inpatient services shall ordinarily be accomplished within
13 two working days or less following the final evaluation of the
14 defendant. If the defendant is discharged to the custody of a local
15 correctional facility, the local correctional facility must continue
16 the medication regimen prescribed by the facility, when clinically
17 appropriate, unless the defendant refuses to cooperate with
18 medication and an involuntary medication order by the court has not
19 been entered.

20 (iv) If there is no professional person at the local correctional
21 facility, the local correctional facility shall designate a
22 professional person as defined in RCW 71.05.020 or, in cooperation
23 with the behavioral health administrative services organization, a
24 professional person at the behavioral health administrative services
25 organization to receive the report and recommendation.

26 (v) Upon commencement of a defendant's evaluation in the local
27 correctional facility, the local correctional facility must notify
28 the evaluator of the name of the professional person, or person
29 designated under (a)(iv) of this subsection, to receive the report
30 and recommendation.

31 (b) If the evaluator concludes, under RCW 10.77.060(3) ~~((+f))~~
32 (g), the person should be evaluated by a designated crisis responder
33 under chapter 71.05 RCW, the court shall order such evaluation be
34 conducted prior to release from confinement when the person is
35 acquitted or convicted and sentenced to confinement for twenty-four
36 months or less, or when charges are dismissed pursuant to a finding
37 of incompetent to stand trial.

38 (2) The designated crisis responder shall provide written
39 notification within twenty-four hours of the results of the
40 determination whether to commence proceedings under chapter 71.05

1 RCW. The notification shall be provided to the persons identified in
2 subsection (1)(a) of this section.

3 (3) The prosecuting attorney shall provide a copy of the results
4 of any proceedings commenced by the designated crisis responder under
5 subsection (2) of this section to the secretary.

6 (4) A facility conducting a civil commitment evaluation under RCW
7 10.77.086(~~((4))~~) (7) or 10.77.088(~~((1)(e)(ii))~~) (5)(b) that makes a
8 determination to release the person instead of filing a civil
9 commitment petition must provide written notice to the prosecutor and
10 defense attorney at least twenty-four hours prior to release. The
11 notice may be given by email, facsimile, or other means reasonably
12 likely to communicate the information immediately.

13 (5) The fact of admission and all information and records
14 compiled, obtained, or maintained in the course of providing services
15 under this chapter may also be disclosed to the courts solely to
16 prevent the entry of any evaluation or treatment order that is
17 inconsistent with any order entered under chapter 71.05 RCW.

18 **Sec. 22.** RCW 71.05.280 and 2022 c 210 s 15 are each amended to
19 read as follows:

20 At the expiration of the fourteen-day period of intensive
21 treatment, a person may be committed for further treatment pursuant
22 to RCW 71.05.320 if:

23 (1) Such person after having been taken into custody for
24 evaluation and treatment has threatened, attempted, or inflicted: (a)
25 Physical harm upon the person of another or himself or herself, or
26 substantial damage upon the property of another, and (b) as a result
27 of a behavioral health disorder presents a likelihood of serious
28 harm; or

29 (2) Such person was taken into custody as a result of conduct in
30 which he or she attempted or inflicted physical harm upon the person
31 of another or himself or herself, or substantial damage upon the
32 property of others, and continues to present, as a result of a
33 behavioral health disorder, a likelihood of serious harm; or

34 (3) Such person has been determined to be incompetent and
35 criminal charges have been dismissed pursuant to RCW 10.77.086(~~((4))~~)
36 (7), and has committed acts constituting a felony, and as a result of
37 a behavioral health disorder, presents a substantial likelihood of
38 repeating similar acts.

1 (a) In any proceeding pursuant to this subsection it shall not be
2 necessary to show intent, willfulness, or state of mind as an element
3 of the crime;

4 (b) For any person subject to commitment under this subsection
5 where the charge underlying the finding of incompetence is for a
6 felony classified as violent under RCW 9.94A.030, the court shall
7 determine whether the acts the person committed constitute a violent
8 offense under RCW 9.94A.030; or

9 (4) Such person is gravely disabled.

10 **Sec. 23.** RCW 71.05.290 and 2022 c 210 s 16 are each amended to
11 read as follows:

12 (1) At any time during a person's 14-day intensive treatment
13 period, the professional person in charge of a treatment facility or
14 his or her professional designee or the designated crisis responder
15 may petition the superior court for an order requiring such person to
16 undergo an additional period of treatment. Such petition must be
17 based on one or more of the grounds set forth in RCW 71.05.280.

18 (2)(a)(i) The petition shall summarize the facts which support
19 the need for further commitment and shall be supported by affidavits
20 based on an examination of the patient and signed by:

21 (A) One physician, physician assistant, or psychiatric advanced
22 registered nurse practitioner; and

23 (B) One physician, physician assistant, psychiatric advanced
24 registered nurse practitioner, or mental health professional.

25 (ii) If the petition is for substance use disorder treatment, the
26 petition may be signed by a substance use disorder professional
27 instead of a mental health professional and by an advanced registered
28 nurse practitioner instead of a psychiatric advanced registered nurse
29 practitioner.

30 (b) The affidavits shall describe in detail the behavior of the
31 detained person which supports the petition and shall explain what,
32 if any, less restrictive treatments which are alternatives to
33 detention are available to such person, and shall state the
34 willingness of the affiant to testify to such facts in subsequent
35 judicial proceedings under this chapter. If less restrictive
36 alternative treatment is sought, the petition shall set forth any
37 recommendations for less restrictive alternative treatment services.

38 (3) If a person has been determined to be incompetent pursuant to
39 RCW 10.77.086(~~(4)~~) (7), then the professional person in charge of

1 the treatment facility or his or her professional designee or the
2 designated crisis responder may directly file a petition for 180-day
3 treatment under RCW 71.05.280(3), or for 90-day treatment under RCW
4 71.05.280 (1), (2), or (4). No petition for initial detention or 14-
5 day detention is required before such a petition may be filed.

6 **Sec. 24.** RCW 71.05.300 and 2020 c 302 s 43 are each amended to
7 read as follows:

8 (1) The petition for ninety day treatment shall be filed with the
9 clerk of the superior court at least three days before expiration of
10 the fourteen-day period of intensive treatment. The clerk shall set a
11 trial setting date as provided in RCW 71.05.310 on the next judicial
12 day after the date of filing the petition and notify the designated
13 crisis responder. The designated crisis responder shall immediately
14 notify the person detained, his or her attorney, if any, and his or
15 her guardian or conservator, if any, the prosecuting attorney, and
16 the behavioral health administrative services organization
17 administrator, and provide a copy of the petition to such persons as
18 soon as possible. The behavioral health administrative services
19 organization administrator or designee may review the petition and
20 may appear and testify at the full hearing on the petition.

21 (2) The attorney for the detained person shall advise him or her
22 of his or her right to be represented by an attorney, his or her
23 right to a jury trial, and, if the petition is for commitment for
24 mental health treatment, his or her loss of firearm rights if
25 involuntarily committed. If the detained person is not represented by
26 an attorney, or is indigent or is unwilling to retain an attorney,
27 the court shall immediately appoint an attorney to represent him or
28 her. The court shall, if requested, appoint a reasonably available
29 licensed physician, physician assistant, psychiatric advanced
30 registered nurse practitioner, psychologist, psychiatrist, or other
31 professional person, designated by the detained person to examine and
32 testify on behalf of the detained person.

33 (3) The court may, if requested, also appoint a professional
34 person as defined in RCW 71.05.020 to seek less restrictive
35 alternative courses of treatment and to testify on behalf of the
36 detained person. In the case of a person with a developmental
37 disability who has been determined to be incompetent pursuant to RCW
38 10.77.086(~~(4)~~) (7), the appointed professional person under this
39 section shall be a developmental disabilities professional.

1 **Sec. 25.** RCW 71.05.425 and 2021 c 264 s 19 are each amended to
2 read as follows:

3 (1)(a) Except as provided in subsection (2) of this section, at
4 the earliest possible date, and in no event later than thirty days
5 before conditional release, final release, authorized leave under RCW
6 71.05.325(2), or transfer to a facility other than a state mental
7 hospital, the superintendent shall send written notice of conditional
8 release, release, authorized leave, or transfer of a person committed
9 under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a
10 sex, violent, or felony harassment offense pursuant to RCW
11 10.77.086(~~((4))~~) (7) to the following:

12 (i) The chief of police of the city, if any, in which the person
13 will reside;

14 (ii) The sheriff of the county in which the person will reside;
15 and

16 (iii) The prosecuting attorney of the county in which the
17 criminal charges against the committed person were dismissed.

18 (b) The same notice as required by (a) of this subsection shall
19 be sent to the following, if such notice has been requested in
20 writing about a specific person committed under RCW 71.05.280(3) or
21 71.05.320(4)(c) following dismissal of a sex, violent, or felony
22 harassment offense pursuant to RCW 10.77.086(~~((4))~~) (7):

23 (i) The victim of the sex, violent, or felony harassment offense
24 that was dismissed pursuant to RCW 10.77.086(~~((4))~~) (7) preceding
25 commitment under RCW 71.05.280(3) or 71.05.320(4)(c) or the victim's
26 next of kin if the crime was a homicide;

27 (ii) Any witnesses who testified against the person in any court
28 proceedings;

29 (iii) Any person specified in writing by the prosecuting
30 attorney. Information regarding victims, next of kin, or witnesses
31 requesting the notice, information regarding any other person
32 specified in writing by the prosecuting attorney to receive the
33 notice, and the notice are confidential and shall not be available to
34 the person committed under this chapter; and

35 (iv) The chief of police of the city, if any, and the sheriff of
36 the county, if any, which had jurisdiction of the person on the date
37 of the applicable offense.

38 (c) The thirty-day notice requirements contained in this
39 subsection shall not apply to emergency medical transfers.

1 (d) The existence of the notice requirements in this subsection
2 will not require any extension of the release date in the event the
3 release plan changes after notification.

4 (2) If a person committed under RCW 71.05.280(3) or
5 71.05.320(4)(c) following dismissal of a sex, violent, or felony
6 harassment offense pursuant to RCW 10.77.086(~~((4))~~) (7) escapes, the
7 superintendent shall immediately notify, by the most reasonable and
8 expedient means available, the chief of police of the city and the
9 sheriff of the county in which the person escaped and in which the
10 person resided immediately before the person's arrest and the
11 prosecuting attorney of the county in which the criminal charges
12 against the committed person were dismissed. If previously requested,
13 the superintendent shall also notify the witnesses and the victim of
14 the sex, violent, or felony harassment offense that was dismissed
15 pursuant to RCW 10.77.086(~~((4))~~) (7) preceding commitment under RCW
16 71.05.280(3) or 71.05.320(4) or the victim's next of kin if the crime
17 was a homicide. In addition, the secretary shall also notify
18 appropriate parties pursuant to RCW 70.02.230(2)(o). If the person is
19 recaptured, the superintendent shall send notice to the persons
20 designated in this subsection as soon as possible but in no event
21 later than two working days after the department of social and health
22 services learns of such recapture.

23 (3) If the victim, the victim's next of kin, or any witness is
24 under the age of sixteen, the notice required by this section shall
25 be sent to the parent or legal guardian of the child.

26 (4) The superintendent shall send the notices required by this
27 chapter to the last address provided to the department of social and
28 health services by the requesting party. The requesting party shall
29 furnish the department of social and health services with a current
30 address.

31 (5) For purposes of this section the following terms have the
32 following meanings:

33 (a) "Violent offense" means a violent offense under RCW
34 9.94A.030;

35 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

36 (c) "Next of kin" means a person's spouse, state registered
37 domestic partner, parents, siblings, and children;

38 (d) "Felony harassment offense" means a crime of harassment as
39 defined in RCW 9A.46.060 that is a felony.

1 **Sec. 26.** RCW 71.09.025 and 2009 c 409 s 2 are each amended to
2 read as follows:

3 (1)(a) When it appears that a person may meet the criteria of a
4 sexually violent predator as defined in RCW 71.09.020(~~((16))~~), the
5 agency with jurisdiction shall refer the person in writing to the
6 prosecuting attorney of the county in which an action under this
7 chapter may be filed pursuant to RCW 71.09.030 and the attorney
8 general, three months prior to:

9 (i) The anticipated release from total confinement of a person
10 who has been convicted of a sexually violent offense;

11 (ii) The anticipated release from total confinement of a person
12 found to have committed a sexually violent offense as a juvenile;

13 (iii) Release of a person who has been charged with a sexually
14 violent offense and who has been determined to be incompetent to
15 stand trial pursuant to RCW 10.77.086(~~((4))~~) (7); or

16 (iv) Release of a person who has been found not guilty by reason
17 of insanity of a sexually violent offense pursuant to RCW
18 10.77.020(3).

19 (b) The agency shall provide the prosecuting agency with all
20 relevant information including but not limited to the following
21 information:

22 (i) A complete copy of the institutional records compiled by the
23 department of corrections relating to the person, and any such out-
24 of-state department of corrections' records, if available;

25 (ii) A complete copy, if applicable, of any file compiled by the
26 indeterminate sentence review board relating to the person;

27 (iii) All records relating to the psychological or psychiatric
28 evaluation and/or treatment of the person;

29 (iv) A current record of all prior arrests and convictions, and
30 full police case reports relating to those arrests and convictions;
31 and

32 (v) A current mental health evaluation or mental health records
33 review.

34 (c) The prosecuting agency has the authority, consistent with RCW
35 72.09.345(~~((3))~~) (4), to obtain all records relating to the person if
36 the prosecuting agency deems such records are necessary to fulfill
37 its duties under this chapter. The prosecuting agency may only
38 disclose such records in the course of performing its duties pursuant
39 to this chapter, unless otherwise authorized by law.

1 (d) The prosecuting agency has the authority to utilize the
2 inquiry judge procedures of chapter 10.27 RCW prior to the filing of
3 any action under this chapter to seek the issuance of compulsory
4 process for the production of any records necessary for a
5 determination of whether to seek the civil commitment of a person
6 under this chapter. Any records obtained pursuant to this process may
7 only be disclosed by the prosecuting agency in the course of
8 performing its duties pursuant to this chapter, or unless otherwise
9 authorized by law.

10 (2) The agency, its employees, and officials shall be immune from
11 liability for any good-faith conduct under this section.

12 (3) As used in this section, "agency with jurisdiction" means
13 that agency with the authority to direct the release of a person
14 serving a sentence or term of confinement and includes the department
15 of corrections, the indeterminate sentence review board, and the
16 department of social and health services.

17 **Sec. 27.** RCW 71.09.030 and 2009 c 409 s 3 are each amended to
18 read as follows:

19 (1) A petition may be filed alleging that a person is a sexually
20 violent predator and stating sufficient facts to support such
21 allegation when it appears that: (a) A person who at any time
22 previously has been convicted of a sexually violent offense is about
23 to be released from total confinement; (b) a person found to have
24 committed a sexually violent offense as a juvenile is about to be
25 released from total confinement; (c) a person who has been charged
26 with a sexually violent offense and who has been determined to be
27 incompetent to stand trial is about to be released, or has been
28 released, pursuant to RCW 10.77.086(~~((4))~~) (7); (d) a person who has
29 been found not guilty by reason of insanity of a sexually violent
30 offense is about to be released, or has been released, pursuant to
31 RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (e) a person
32 who at any time previously has been convicted of a sexually violent
33 offense and has since been released from total confinement and has
34 committed a recent overt act.

35 (2) The petition may be filed by:

36 (a) The prosecuting attorney of a county in which:

37 (i) The person has been charged or convicted with a sexually
38 violent offense;

1 (ii) A recent overt act occurred involving a person covered under
2 subsection (1)(e) of this section; or

3 (iii) The person committed a recent overt act, or was charged or
4 convicted of a criminal offense that would qualify as a recent overt
5 act, if the only sexually violent offense charge or conviction
6 occurred in a jurisdiction other than Washington; or

7 (b) The attorney general, if requested by the county prosecuting
8 attorney identified in (a) of this subsection. If the county
9 prosecuting attorney requests that the attorney general file and
10 prosecute a case under this chapter, then the county shall charge the
11 attorney general only the fees, including filing and jury fees, that
12 would be charged and paid by the county prosecuting attorney, if the
13 county prosecuting attorney retained the case.

14 **Sec. 28.** RCW 71.09.060 and 2009 c 409 s 6 are each amended to
15 read as follows:

16 (1) The court or jury shall determine whether, beyond a
17 reasonable doubt, the person is a sexually violent predator. In
18 determining whether or not the person would be likely to engage in
19 predatory acts of sexual violence if not confined in a secure
20 facility, the fact finder may consider only placement conditions and
21 voluntary treatment options that would exist for the person if
22 unconditionally released from detention on the sexually violent
23 predator petition. The community protection program under RCW
24 71A.12.230 may not be considered as a placement condition or
25 treatment option available to the person if unconditionally released
26 from detention on a sexually violent predator petition. When the
27 determination is made by a jury, the verdict must be unanimous.

28 If, on the date that the petition is filed, the person was living
29 in the community after release from custody, the state must also
30 prove beyond a reasonable doubt that the person had committed a
31 recent overt act. If the state alleges that the prior sexually
32 violent offense that forms the basis for the petition for commitment
33 was an act that was sexually motivated as provided in RCW
34 71.09.020(~~((15)(e))~~) (18)(c), the state must prove beyond a
35 reasonable doubt that the alleged sexually violent act was sexually
36 motivated as defined in RCW 9.94A.030.

37 If the court or jury determines that the person is a sexually
38 violent predator, the person shall be committed to the custody of the
39 department of social and health services for placement in a secure

1 facility operated by the department of social and health services for
2 control, care, and treatment until such time as: (a) The person's
3 condition has so changed that the person no longer meets the
4 definition of a sexually violent predator; or (b) conditional release
5 to a less restrictive alternative as set forth in RCW 71.09.092 is in
6 the best interest of the person and conditions can be imposed that
7 would adequately protect the community.

8 If the court or unanimous jury decides that the state has not met
9 its burden of proving that the person is a sexually violent predator,
10 the court shall direct the person's release.

11 If the jury is unable to reach a unanimous verdict, the court
12 shall declare a mistrial and set a retrial within forty-five days of
13 the date of the mistrial unless the prosecuting agency earlier moves
14 to dismiss the petition. The retrial may be continued upon the
15 request of either party accompanied by a showing of good cause, or by
16 the court on its own motion in the due administration of justice
17 provided that the respondent will not be substantially prejudiced. In
18 no event may the person be released from confinement prior to retrial
19 or dismissal of the case.

20 (2) If the person charged with a sexually violent offense has
21 been found incompetent to stand trial, and is about to be or has been
22 released pursuant to RCW 10.77.086(~~((4))~~) (7), and his or her
23 commitment is sought pursuant to subsection (1) of this section, the
24 court shall first hear evidence and determine whether the person did
25 commit the act or acts charged if the court did not enter a finding
26 prior to dismissal under RCW 10.77.086(~~((4))~~) (7) that the person
27 committed the act or acts charged. The hearing on this issue must
28 comply with all the procedures specified in this section. In
29 addition, the rules of evidence applicable in criminal cases shall
30 apply, and all constitutional rights available to defendants at
31 criminal trials, other than the right not to be tried while
32 incompetent, shall apply. After hearing evidence on this issue, the
33 court shall make specific findings on whether the person did commit
34 the act or acts charged, the extent to which the person's
35 incompetence or developmental disability affected the outcome of the
36 hearing, including its effect on the person's ability to consult with
37 and assist counsel and to testify on his or her own behalf, the
38 extent to which the evidence could be reconstructed without the
39 assistance of the person, and the strength of the prosecution's case.
40 If, after the conclusion of the hearing on this issue, the court

1 finds, beyond a reasonable doubt, that the person did commit the act
2 or acts charged, it shall enter a final order, appealable by the
3 person, on that issue, and may proceed to consider whether the person
4 should be committed pursuant to this section.

5 (3) Except as otherwise provided in this chapter, the state shall
6 comply with RCW 10.77.220 while confining the person. During all
7 court proceedings where the person is present, the person shall be
8 detained in a secure facility. If the proceedings last more than one
9 day, the person may be held in the county jail for the duration of
10 the proceedings, except the person may be returned to the
11 department's custody on weekends and court holidays if the court
12 deems such a transfer feasible. The county shall be entitled to
13 reimbursement for the cost of housing and transporting the person
14 pursuant to rules adopted by the secretary. The department shall not
15 place the person, even temporarily, in a facility on the grounds of
16 any state mental facility or regional habilitation center because
17 these institutions are insufficiently secure for this population.

18 (4) A court has jurisdiction to order a less restrictive
19 alternative placement only after a hearing ordered pursuant to RCW
20 71.09.090 following initial commitment under this section and in
21 accord with the provisions of this chapter.

22 NEW SECTION. **Sec. 29.** Sections 6, 7, and 9 of this act are
23 necessary for the immediate preservation of the public peace, health,
24 or safety, or support of the state government and its existing public
25 institutions, and take effect immediately.

26 NEW SECTION. **Sec. 30.** (1) Section 7 of this act expires when
27 section 8 of this act takes effect.

28 (2) The department of social and health services shall provide
29 written notice of the expiration date of section 7 of this act to
30 affected parties, the chief clerk of the house of representatives,
31 the secretary of the senate, the office of the code reviser, and
32 others as deemed appropriate by the department.

33 NEW SECTION. **Sec. 31.** Section 13 of this act takes effect
34 December 1, 2023.

35 NEW SECTION. **Sec. 32.** If specific funding for the purposes of
36 this act, referencing this act by bill or chapter number, is not

1 provided by June 30, 2023, in the omnibus appropriations act, this
2 act is null and void."

3 Correct the title.

EFFECT: Provides that when a court determines if there is a genuine doubt as to competency, waiver of attorney-client privilege is not required, and defense counsel may file a declaration stating there is reason to believe a competency evaluation is necessary and the basis on which the defendant is believed to be incompetent without further detail required.

Allows access to records of the Aging and Long-Term Support Administration for purposes of competency evaluations and requires an evaluation report to include an opinion as to restorability if the defendant suffers from an intellectual or developmental disability, traumatic brain injury, or dementia.

Delays until October 1, 2023, provisions allowing a court to order driver's license revocation for a person found incompetent to stand trial who is charged with specified traffic offenses.

Establishes new competency restoration procedures for any "qualifying class C felony," defined as any class C felony except: (1) Assault 3 where bodily harm occurred; (2) felony Physical Control of a Vehicle or Hit and Run resulting in injury; (3) Hate Crime Offense; (4) a class C felony with a domestic violence designation; (5) a class C felony sex offense; and (6) a class C felony offense with a sexual motivation allegation.

Requires a forensic navigator to be appointed for, and to meet with, any person charged with a qualifying class C felony who has had two or more competency evaluations in 24 months on separate charges to determine the person's willingness to engage with diversion and to propose a diversion plan if recommended.

Provides that if a person whose highest charge is a qualifying class C felony is found incompetent and the court finds that there is a diversion program available to accept the defendant as recommended by a forensic navigator, the court must dismiss the charges without prejudice and refer the person to the diversion program, except that if the court has previously determined that a diversion program is not appropriate, the forensic navigator does not recommend diversion, or the prosecutor objects to the dismissal, the court must schedule a hearing within seven days to determine whether there is a compelling state interest in ordering competency restoration.

If the court finds a compelling state interest, the court must order outpatient competency restoration unless the court finds outpatient restoration inappropriate, in which case the court must order inpatient competency restoration.

Provides that competency restoration for a defendant charged with a qualifying class C felony is limited to one period of restoration treatment not exceeding 45 days if ordered to receive inpatient competency restoration and 90 days if ordered to receive outpatient competency restoration.

Provides that for any defendant with a felony charge admitted for competency restoration with an accompanying court order for involuntary medication, if the defendant is found not competent following that period of restoration, charges must be dismissed with prejudice and the defendant committed to the DSHS for evaluation under the Involuntary Treatment Act.

Provides that when criminal charges are dismissed and the defendant committed to the DSHS for evaluation under the ITA, if the defendant is already in a facility operated or contracted by the DSHS, the time periods for conducting the evaluation begin upon receipt by the DSHS of the court order dismissing the charges.

Limits the nonfelony offenses that are included as "serious offenses" for purposes of eligibility for competency restoration and involuntary medication orders to the following: Any gross misdemeanor offense with a domestic violence designation or a sexual motivation allegation; and gross misdemeanor violations of Driving Under the Influence or Physical Control of a Vehicle.

Requires forensic navigators to collaborate with available *Trueblood* settlement diversion programs if they are accessible in the geographic location where criminal charges are filed.

Establishes additional requirements relating to persons found incompetent to stand trial due to an intellectual or developmental disability, dementia, or a traumatic brain injury, and delays these provisions until December 1, 2023, including:

(a) Providing that a person who has been found incompetent and not restorable due to an intellectual or developmental disability, dementia, or traumatic brain injury, may not be referred for competency restoration services unless the highest current criminal charge is a violent offense or sex offense.

(b) Requiring the Department of Social and Health Services (DSHS) to develop a process for connecting these individuals to available wraparound services and supports. Specifies requirements for individuals who are current clients of the DSHS, and for individuals who are not current clients, including connecting the person with the forensic navigator to determine if the person is eligible for any diversion, supportive housing, or case management programs as a *Trueblood* class member.

Requires the University of Washington to implement a two-year pilot project to provide short-term stabilization and transition support for individuals found incompetent to stand trial due to an intellectual or developmental disability who are or have been *Trueblood* class members.

Beginning January 2, 2024, requires the Health Care Authority (HCA) to implement a pilot project in phase one *Trueblood* settlement regions, by creating three behavioral health crisis systems regional coordinator positions in the Pierce, Southwest, and Spokane behavioral health administrative services organization regions. Specifies that the purpose of the pilot program is to support and assist participants across the voluntary, involuntary, and forensic behavioral health systems to better understand the intersection of these systems and develop strategies for improved coordination and access to services across systems, including by increasing the utilization of assisted outpatient treatment, outpatient competency restoration, and diversion programs. Requires the HCA to issue an initial report by September 30, 2025, and a final report by September 1, 2026.

Requires the DSHS when seeking a court order authorizing involuntary medication for purposes of competency restoration to also seek authorization to continue involuntary medication for purposes of maintaining the level of restoration in a jail or juvenile detention facility following the restoration period.

Requires the DSHS to establish a program to reimburse jails or juvenile detention facilities for the costs of any drugs the jail or juvenile detention facility does not otherwise have available and must continue prescribing to an individual who is medically stable on the drug.

Provides that crisis intervention specialists are subject to the security and background investigation requirements of jails.

Clarifies that if a defendant charged with a nonfelony or qualifying class C felony is subject to a civil involuntary treatment order or proceedings for involuntary treatment have been initiated, there is a presumption that there is no compelling interest in ordering competency restoration for the defendant.

--- END ---