

E2SSB 5440 - H COMM AMD

By Committee on Civil Rights & Judiciary

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
32 contracts are expected to allow for the discharge or transfer of over

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

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

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

29 As used in this chapter:

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

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

33 (3) "Clinical intervention specialist" means a licensed
34 professional with prescribing authority who is employed by or
35 contracted with the department to provide direct services, enhanced
36 oversight and monitoring of the behavioral health status of in-
37 custody defendants who have been referred for evaluation or
38 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 or dementia, the
38 evaluator shall notify the department, which shall refer the
39 individual to the developmental disabilities administration or the
40 aging and long-term support administration of the department for

1 review of eligibility for services. Information about availability of
2 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 9 of this
8 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 that is not a
24 qualifying class C felony, and that defendant is determined to be
25 incompetent, until he or she has regained the competency necessary to
26 understand the proceedings against him or her and assist in his or
27 her own defense, but in any event for a period of no longer than 90
28 days, the court shall commit the defendant to the custody of the
29 secretary for inpatient competency restoration, or may alternatively
30 order the defendant to receive outpatient competency restoration
31 based on a recommendation from a forensic navigator and input from
32 the parties.

33 (2)(a) If the defendant is charged with a qualifying class C
34 felony as their highest charge and determined to be incompetent, and
35 the court finds that there is a diversion program as recommended by a
36 forensic navigator, the court shall dismiss the proceedings without
37 prejudice and refer the defendant to the recommended diversion
38 program, except that if the court has previously determined that a
39 diversion program under section 9 of this act is not appropriate, the

1 forensic navigator does not recommend diversion, or the prosecutor
2 objects to the dismissal and provides notice of a motion for an order
3 for competency restoration treatment, then the court shall schedule a
4 hearing within 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, and 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 (c) of this subsection.

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 the state's compelling interest has
19 been satisfied. Beginning October 1, 2023, if the defendant is
20 charged with a serious traffic offense under RCW 9.94A.030, or a
21 felony version of a serious traffic offense, the court may order the
22 clerk to transmit an order to the department of licensing for
23 revocation of the defendant's driver's license for a period of one
24 year. The court shall direct the clerk to transmit an order to the
25 department of licensing reinstating the defendant's driver's license
26 if the defendant is subsequently restored to competency and may do so
27 at any time before the end of one year for good cause upon the
28 petition of the defendant.

29 (c) If a court finds pursuant to (b) of this subsection that
30 there is a compelling state interest in pursuing competency
31 restoration treatment or the court has previously determined that a
32 diversion program under section 9 of this act is not appropriate for
33 the defendant, the court shall order the defendant to receive
34 outpatient competency restoration consistent with the recommendation
35 of the forensic navigator, unless the court finds that an order for
36 outpatient competency restoration is inappropriate considering the
37 health and safety of the defendant and risks to public safety. If the
38 court does not order the defendant to receive outpatient competency
39 restoration, the court shall commit the defendant to the department

1 for placement in a facility operated or contracted by the department
2 for inpatient competency restoration.

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

6 (i) Adhere to medications or receive prescribed intramuscular
7 medication;

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

9 (iii) Comply with urinalysis or breathalyzer monitoring if
10 needed.

11 (b) If the court orders inpatient competency restoration, the
12 department shall place the defendant in an appropriate facility of
13 the department for competency restoration.

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

27 (d) If a defendant fails to comply with the restrictions of the
28 outpatient restoration program such that restoration is no longer
29 appropriate in that setting or the defendant is no longer clinically
30 appropriate for outpatient competency restoration, the director of
31 the outpatient competency restoration program shall notify the
32 authority and the department of the need to terminate the outpatient
33 competency restoration placement and intent to request placement for
34 the defendant in an appropriate facility of the department for
35 inpatient competency restoration. The outpatient competency
36 restoration program shall coordinate with the authority, the
37 department, and any law enforcement personnel under (d)(i) of this
38 subsection to ensure that the time period between termination and
39 admission into the inpatient facility is as minimal as possible. The
40 time period for inpatient competency restoration shall be reduced by

1 the time period spent in active treatment within the outpatient
2 competency restoration program, excluding time periods in which the
3 defendant was absent from the program and all time from notice of
4 termination of the outpatient competency restoration period through
5 the defendant's admission to the facility. The department shall
6 obtain a placement for the defendant within seven days of the notice
7 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) The court may not issue an order for outpatient competency
29 restoration unless the (~~department~~) authority certifies that there
30 is an available appropriate outpatient competency restoration program
31 that has adequate space for the person at the time the order is
32 issued or the court places the defendant under the guidance and
33 control of a professional person identified in the court order.

34 (~~(+2)~~) (4)(a) For a defendant whose highest charge is a class C
35 felony that is not a qualifying class C felony, or a class B felony
36 that is not classified as violent under RCW 9.94A.030, the maximum
37 time allowed for the initial competency restoration period is 45 days
38 if the defendant is referred for inpatient competency restoration, or
39 90 days if the defendant is referred for outpatient competency
40 restoration, provided that if the outpatient competency restoration

1 placement is terminated and the defendant is subsequently admitted to
2 an inpatient facility, the period of inpatient treatment during the
3 first competency restoration period under this subsection shall not
4 exceed 45 days.

5 ~~((3))~~ (b) For a defendant whose highest charge is a qualifying
6 class C felony, the maximum time allowed for competency restoration
7 is 45 days if the defendant is referred for inpatient competency
8 restoration, or 90 days if the defendant is referred for outpatient
9 competency restoration. The court may order any combination of
10 inpatient and outpatient competency restoration under this
11 subsection, but the total period of inpatient competency restoration
12 may not exceed 45 days.

13 (c) For any defendant with a felony charge that is admitted for
14 competency restoration with an accompanying court order for
15 involuntary medication under RCW 10.77.092, and the defendant is
16 found not competent to stand trial following that period of
17 restoration, charges shall be dismissed pursuant to subsection (7) of
18 this section.

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

27 ~~((4) On)~~ (6) For a defendant charged with a felony that is not
28 a qualifying class C felony, on or before expiration of the initial
29 competency restoration period the court shall conduct a hearing to
30 determine whether the defendant is now competent to stand trial. If
31 the court finds by a preponderance of the evidence that the defendant
32 is incompetent to stand trial, the court may order an extension of
33 the competency restoration period for an additional period of 90
34 days, but the court must at the same time set a date for a new
35 hearing to determine the defendant's competency to stand trial before
36 the expiration of this second restoration period. The defendant, the
37 defendant's attorney, and the prosecutor have the right to demand
38 that the hearing be before a jury. No extension shall be ordered for
39 a second or third competency restoration period if the defendant's
40 incompetence has been determined by the secretary to be solely the

1 result of ~~((a))~~ an intellectual or developmental disability,
2 dementia, or traumatic brain injury which is such that competence is
3 not reasonably likely to be regained during an extension.

4 ~~((5))~~ (7) At the hearing upon the expiration of the second
5 competency restoration period, or at the end of the first competency
6 restoration period if the defendant is ineligible for a second or
7 third competency restoration period under subsection (4) or (6) of
8 this section, if the jury or court finds that the defendant is
9 incompetent to stand trial, the court shall dismiss the charges
10 without prejudice and order the defendant to be committed to ~~((a~~
11 ~~state hospital))~~ the department for placement in a facility operated
12 or contracted by the department for up to 120 hours, upon department
13 receipt of the court order, if the defendant has not undergone
14 competency restoration services or has engaged in outpatient
15 competency restoration services, and up to 72 hours, upon department
16 receipt of the court order, if the defendant engaged in inpatient
17 competency restoration services starting from admission to the
18 facility, excluding Saturdays, Sundays, and holidays, for evaluation
19 for the purpose of filing a civil commitment petition under chapter
20 71.05 RCW. However, for a defendant charged with a felony that is not
21 a qualifying class C felony, the court shall not dismiss the charges
22 if the court or jury finds that: (a) The defendant (i) is a
23 substantial danger to other persons; or (ii) presents a substantial
24 likelihood of committing criminal acts jeopardizing public safety or
25 security; and (b) there is a substantial probability that the
26 defendant will regain competency within a reasonable period of time.
27 If the court or jury makes such a finding, the court may extend the
28 period of commitment for up to an additional six months.

29 ~~((6))~~ (8) Any period of competency restoration treatment under
30 this section includes only the time the defendant is actually at the
31 facility or is actively participating in an outpatient competency
32 restoration program and is in addition to reasonable time for
33 transport to or from the facility.

34 (9) "Qualifying class C felony" means any class C felony offense
35 except: (a) Assault in the third degree where bodily harm has
36 occurred; (b) felony physical control of a vehicle under RCW
37 46.61.504(6); (c) felony hit and run resulting in injury under RCW
38 46.52.020(4) (b); and (d) any class C felony offense with a domestic
39 violence designation.

1 **Sec. 8.** RCW 10.77.088 and 2022 c 288 s 5 are each amended to
2 read as follows:

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

6 (a) Shall dismiss the proceedings without prejudice and detain
7 the defendant (~~for sufficient time to allow the designated crisis~~
8 ~~responder to evaluate the defendant and consider initial detention~~
9 ~~proceedings under chapter 71.05 RCW~~) pursuant to subsection (5) of
10 this section, unless the prosecutor objects to the dismissal and
11 provides notice of a motion for an order for competency restoration
12 treatment, in which case the court shall schedule a hearing within
13 seven days.

14 (b) (i) At the hearing, the prosecuting attorney must establish
15 that there is a compelling state interest to order competency
16 restoration treatment for the defendant. The court may consider prior
17 criminal history, prior history in treatment, prior history of
18 violence, the quality and severity of the pending charges, any
19 history that suggests whether competency restoration treatment is
20 likely to be successful, in addition to the factors listed under RCW
21 10.77.092. If the prosecuting attorney proves by a preponderance of
22 the evidence that there is a compelling state interest in ordering
23 competency restoration treatment, then the court shall issue an order
24 in accordance with subsection (2) of this section.

25 (ii) If the defendant is subject to an order under chapter 71.05
26 RCW or proceedings under chapter 71.05 RCW have been initiated, there
27 is a rebuttable presumption that the state's compelling interest has
28 been satisfied. Beginning October 1, 2023, if the defendant is
29 charged with a serious traffic offense under RCW 9.94A.030, the court
30 may order the clerk to transmit an order to the department of
31 licensing for revocation of the defendant's driver's license for a
32 period of one year. The court shall direct the clerk to transmit an
33 order to the department of licensing reinstating the defendant's
34 driver's license if the defendant is subsequently restored to
35 competency, and may do so at any time before the end of one year for
36 good cause upon the petition of the defendant.

37 (2) (a) If a court finds pursuant to subsection (1)(b) of this
38 section that there is a compelling state interest in pursuing
39 competency restoration treatment, the court shall (~~commit the~~
40 ~~defendant to the custody of the secretary for inpatient competency~~

1 ~~restoration, or may alternatively))~~ order the defendant to receive
2 outpatient competency restoration (~~(based on a recommendation from a~~
3 ~~forensic navigator and input from the parties))~~ consistent with the
4 recommendation of the forensic navigator, unless the court finds that
5 an order for outpatient competency restoration is inappropriate
6 considering the health and safety of the defendant and risks to
7 public safety.

8 ~~((a))~~ (b) To be eligible for an order for outpatient competency
9 restoration, a defendant must be (~~clinically appropriate and be~~)
10 willing to:

11 (i) Adhere to medications or receive prescribed intramuscular
12 medication;

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

14 (iii) Comply with urinalysis or breathalyzer monitoring if
15 needed.

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

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

34 ~~((d))~~ (e) If a defendant fails to comply with the restrictions
35 of the outpatient competency restoration program such that
36 restoration is no longer appropriate in that setting or the defendant
37 is no longer clinically appropriate for outpatient competency
38 restoration, the director of the outpatient competency restoration
39 program shall notify the authority and the department of the need to
40 terminate the outpatient competency restoration placement and intent

1 to request placement for the defendant in an appropriate facility of
2 the department for inpatient competency restoration. The outpatient
3 competency restoration program shall coordinate with the authority,
4 the department, and any law enforcement personnel under ~~((d))~~ (e)
5 (i) of this subsection to ensure that the time period between
6 termination and admission into the inpatient facility is as minimal
7 as possible. The time period for inpatient competency restoration
8 shall be reduced by the time period spent in active treatment within
9 the outpatient competency restoration program, excluding time periods
10 in which the defendant was absent from the program and all time from
11 notice of termination of the outpatient competency restoration period
12 through the defendant's admission to the facility. The department
13 shall obtain a placement for the defendant within seven days of the
14 notice of intent to terminate the outpatient competency restoration
15 placement.

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

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

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

1 (g) If the court does not order the defendant to receive
2 outpatient competency restoration under (a) of this subsection, the
3 court shall commit the defendant to the department for placement in a
4 facility operated or contracted by the department for inpatient
5 competency restoration.

6 (3) The placement under subsection (2) of this section shall not
7 exceed 29 days if the defendant is ordered to receive inpatient
8 competency restoration, and shall not exceed 90 days if the defendant
9 is ordered to receive outpatient competency restoration. The court
10 may order any combination of this subsection, but the total period of
11 inpatient competency restoration may not exceed 29 days.

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

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

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

35 (6) If the defendant is charged with a nonfelony crime that is
36 not a serious offense as defined in RCW 10.77.092 and found by the
37 court to be not competent, the court may stay or dismiss proceedings
38 and detain the defendant for sufficient time to allow the designated
39 crisis responder to evaluate the defendant and consider initial
40 detention proceedings under chapter 71.05 RCW. The court must give

1 notice to all parties at least 24 hours before the dismissal of any
2 proceeding under this subsection, and provide an opportunity for a
3 hearing on whether to dismiss the proceedings.

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

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

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

21 (1) In counties with a forensic navigator program, a forensic
22 navigator shall:

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

29 (b) Provide a diversion program plan to the parties in each case
30 that includes a recommendation for a diversion program to defense
31 counsel and the prosecuting attorney. Services under a diversion
32 program may include a referral for assisted outpatient treatment
33 under chapter 71.05 RCW.

34 (2) If the parties agree on the diversion program recommended by
35 the forensic navigator, the prosecutor shall request dismissal of the
36 criminal charges.

37 (3) If the parties do not agree on the diversion program, the
38 defense may move the court for an order dismissing the criminal
39 charges without prejudice and referring the defendant to the services

1 described in the diversion program. The court shall hold a hearing on
2 this motion within 10 days. The court shall grant the defense motion
3 if it finds by a preponderance of the evidence that the defendant is
4 amenable to the services described in the diversion program and can
5 safely receive services in the community.

6 (4) Individuals who receive a dismissal of charges and referral
7 to services described in a diversion program shall have a forensic
8 navigator assigned to assist them for up to six months while engaging
9 in the services described in the diversion program. The forensic
10 navigator shall provide monthly status updates to the court and the
11 parties regarding the individual's status in the diversion program.

12 **Sec. 10.** RCW 10.77.092 and 2014 c 10 s 2 are each amended to
13 read as follows:

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

20 (a) Any violent offense, sex offense, (~~(serious—traffie~~
21 ~~offense,~~) and most serious offense, as those terms are defined in
22 RCW 9.94A.030;

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

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

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

29 (e) Any felony offense listed as a harassment offense in chapter
30 9A.46 RCW;

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

33 (g) Any gross misdemeanor violation of RCW 46.61.502 or
34 46.61.504;

35 (h) Any gross misdemeanor offense with a sexual motivation
36 allegation; or

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

1 (2) Anytime the secretary seeks a court order authorizing the
2 involuntary medication for purposes of competency restoration
3 pursuant to RCW 10.77.084, the secretary's petition must also seek
4 authorization to continue involuntary medication for purposes of
5 maintaining the level of restoration in the jail or juvenile
6 detention facility following the restoration period.

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

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

17 (i) The charge includes an allegation that the defendant actually
18 inflicted bodily or emotional harm on another person or that the
19 defendant created a reasonable apprehension of bodily or emotional
20 harm to another;

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

23 (iii) The number and nature of related charges pending against
24 the defendant;

25 (iv) The length of potential confinement if the defendant is
26 convicted; and

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

29 NEW SECTION. Sec. 11. A new section is added to chapter 10.77
30 RCW to read as follows:

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

1 (a) The substitution is for a generic version of a name brand
2 drug and the generic version is chemically identical to the name
3 brand drug; or

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

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

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

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

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

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

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

38 (i) Coordinate with the individual's services providers to
39 determine if the individual can return to the same or like services,

1 or determine appropriate new services. This shall include updating
2 the individual's service plan and identifying and coordinating
3 potential funding for any additional supports to stabilize the
4 individual in any setting funded by the developmental disabilities
5 administration or aging and long-term support administration so that
6 the individual does not lose existing services, including submitting
7 any exceptions to rule for additional services;

8 (ii) Conduct a current service eligibility assessment and send
9 referral packets to service providers, both the developmental
10 disabilities administration and aging and long-term support
11 administration, for all services for which the individual is eligible
12 if they do not have a current residential service and supports
13 provider; and

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

18 (b) For individuals who have not established eligibility for the
19 department's residential and support services, the department shall:

20 (i) Conduct an eligibility determination for services of the
21 developmental disabilities administration and aging and long-term
22 support administration and send referral packets to residential
23 service providers and both the developmental disabilities
24 administration and aging and long-term support administration for all
25 relevant services for which the individual is eligible. This process
26 must include identifying and coordinating funding for any additional
27 supports that are needed to stabilize the individual in any
28 residential setting funded by the developmental disabilities
29 administration or aging and long-term support administration,
30 including pursuing any necessary exceptions to rule; and

31 (ii) Connect with the individual's assigned forensic navigator
32 and determine if the individual is eligible for any diversion,
33 supportive housing, or case management programs as a Trueblood class
34 member, if additional specialized services are available to
35 supplement diversion program services, and assist the individual to
36 access these services.

37 (3) The department shall offer to transition the individual in
38 services either directly from the jail or as soon thereafter as may
39 be practicable, without maintaining the individual at an inpatient
40 facility for longer than is clinically necessary. Nothing in this

1 subsection prohibits the department from returning the individual to
2 their home or to another less restrictive setting if such setting is
3 appropriate, which may include provision of supportive services to
4 help the person maintain stability. The individual is not required to
5 accept developmental disabilities administration, aging and long-term
6 support administration, or other diversionary services as a condition
7 of having the individual's criminal case dismissed without prejudice,
8 provided the individual meets the criteria of subsection (1) of this
9 section.

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

23 NEW SECTION. **Sec. 13.** Subject to the availability of funds
24 appropriated for this specific purpose, the health care authority
25 shall require the programs it contracts with to increase compensation
26 for staff in outpatient competency restoration programs to provide
27 compensation at competitive levels to improve recruitment and allow
28 for the full implementation of outpatient competency restoration
29 programs.

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

32 An outpatient competency restoration program must include access
33 to a prescriber.

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

36 Jails shall allow clinical intervention specialists to have
37 access to individuals who are referred to receive services under this

1 chapter and to all records relating to the health or conduct of the
2 individual while incarcerated. Clinical intervention specialists
3 shall support jail health services in providing direct services,
4 enhanced oversight and monitoring of the behavioral health status of
5 participating individuals. Clinical intervention specialists shall
6 work collaboratively with jail health services to ensure appropriate
7 prescriptions, medication compliance monitoring, and access to
8 supportive behavioral health services to the individuals. Clinical
9 intervention specialists shall coordinate with forensic navigators
10 and the department to assist forensic navigators in making
11 recommendations for appropriate placements, which may include
12 recommendations for participation in an outpatient competency
13 restoration program or a diversion program designed for the needs of
14 the individual. The clinical intervention specialist shall notify the
15 department if a participating individual appears to have stabilized
16 in their behavioral health such that a new competency evaluation is
17 appropriate to reassess the individual's need for competency
18 restoration treatment.

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

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

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

26 (1) The department shall coordinate with cities, counties,
27 hospitals, and other public and private entities to identify
28 locations that may be commissioned or renovated for use in treating
29 clients committed to the department for competency evaluation,
30 competency restoration, civil conversion, or treatment following
31 acquittal by reason of insanity.

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

35 NEW SECTION. **Sec. 18.** Sections 6 through 8 of this act are
36 necessary for the immediate preservation of the public peace, health,

1 or safety, or support of the state government and its existing public
2 institutions, and take effect immediately.

3 NEW SECTION. **Sec. 19.** Section 12 of this act takes effect
4 December 1, 2023."

5 Correct the title.

EFFECT: Provides that nothing in the provision that requires the court to determine whether there is a genuine doubt as to competency requires the waiver of attorney-client privilege.

Provides that defense counsel may file a declaration stating that they have reason to believe a competency evaluation is necessary, and stating 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 provides that an evaluation report must 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 revocation of the driver's license of 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 in the third degree where bodily harm occurred; (2) felony Physical Control of a Vehicle; (3) felony Hit and Run resulting in injury; and (4) any class C felony offense with a domestic violence designation.

Requires a forensic navigator to be appointed for, and to meet with, any person charged with a qualifying felony offense 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 where 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 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, then 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 that it is not appropriate, 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 Department for evaluation under the Involuntary Treatment Act.

Limits the nonfelony offenses that are included as "serious offenses" for purposes of eligibility for competency restoration services 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.

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 an individual found incompetent to stand trial 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 DSHS to develop a process for connecting these individuals to available wraparound services and residential supports. Specifies requirements for individuals who are current clients of the Developmental Disabilities Administration or Aging and Long-Term Support Administration, 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 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.

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