

E2SSB 5440 - H AMD 669

By Representative Farivar

WITHDRAWN 04/11/2023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~~) has a mental disease or
36 defect, or has a developmental disability, an opinion as to
37 competency;

38 (d) If the defendant has indicated his or her intention to rely
39 on the defense of insanity pursuant to RCW 10.77.030, and an
40 evaluation and report by an expert or professional person has been

1 provided concluding that the defendant was criminally insane at the
2 time of the alleged offense, an opinion as to the defendant's sanity
3 at the time of the act, and an opinion as to whether the defendant
4 presents a substantial danger to other persons, or presents a
5 substantial likelihood of committing criminal acts jeopardizing
6 public safety or security, unless kept under further control by the
7 court or other persons or institutions, provided that no opinion
8 shall be rendered under this subsection (3)(d) unless the evaluator
9 or court determines that the defendant is competent to stand trial;

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

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

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

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

31 (6) If a finding of the competency evaluation under this section
32 or under RCW 10.77.084 is that the individual is not competent due to
33 an intellectual or developmental disability, dementia, or traumatic
34 brain injury, the evaluator shall notify the department, which shall
35 refer the individual to the developmental disabilities administration
36 or the aging and long-term support administration of the department
37 for review of eligibility for services. Information about
38 availability of services must be provided to the forensic navigator.

39 (7) If the expert or professional person appointed to perform a
40 competency evaluation in the community is not able to complete the

1 evaluation after two attempts at scheduling with the defendant, the
2 department shall submit a report to the court and parties and include
3 a date and time for another evaluation which must be at least four
4 weeks later. The court shall provide notice to the defendant of the
5 date and time of the evaluation. If the defendant fails to appear at
6 that appointment, the court shall issue a warrant for the failure to
7 appear and recall the order for competency evaluation.

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

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

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

18 (i) To complete a competency evaluation in jail and distribute
19 the evaluation report; and

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

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

28 (2)(a) A maximum time limit of seven days as measured from the
29 department's receipt of the court order, or a maximum time limit of
30 14 days as measured from signature of the court order, whichever is
31 shorter, is established to complete the services specified in
32 subsection (1)(a) of this section, subject to the limitations under
33 subsection (9) of this section.

34 (b) A maximum time limit of 14 days as measured from the
35 department's receipt of the court order, or a maximum time limit of
36 21 days as measured from signature of the court order, whichever is
37 shorter, is established to complete the services specified in
38 subsection (1)(b) of this section, subject to the limitations under
39 subsection (9) of this section.

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

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

13 (a) Despite a timely request, the department has not received
14 necessary medical information regarding the current medical status of
15 a defendant;

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

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

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

28 (e) Completion of the referral requires additional time to
29 accommodate the availability or participation of counsel, court
30 personnel, interpreters, or the defendant;

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

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

37 (5) The department shall provide written notice to the court when
38 it will not be able to meet the maximum time limits under subsection
39 (2) of this section and identify the reasons for the delay and
40 provide a reasonable estimate of the time necessary to complete the

1 competency service. Good cause for an extension for the additional
2 time estimated by the department shall be presumed absent a written
3 response from the court or a party received by the department within
4 seven days.

5 (6) The department shall:

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

12 (b) Investigate the extent to which patients admitted to a state
13 hospital under this chapter overstay time periods authorized by law
14 and take reasonable steps to limit the time of commitment to
15 authorized periods; and

16 (c) Establish written standards for the productivity of forensic
17 evaluators and utilize these standards to internally review the
18 performance of forensic evaluators.

19 (7) Following any quarter in which a state hospital has failed to
20 meet one or more of the performance targets or maximum time limits
21 under subsection (1) or (2) of this section, the department shall
22 report to the executive and the legislature the extent of this
23 deviation and describe any corrective action being taken to improve
24 performance. This report shall be made publicly available. An average
25 may be used to determine timeliness under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (iv) Providing information to the court concerning the
39 individual's progress and compliance with court-ordered conditions of

1 release, which may include appearing at court hearings to provide
2 information to the court;

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

5 (vi) Assisting the individual with obtaining prescribed
6 medication and encouraging adherence with prescribed medication;

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

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

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

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

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

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

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

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

35 (6) The signed order for competency evaluation from the court
36 shall serve as authority for the forensic navigator to be given
37 access to all records held by a behavioral health, educational, or
38 law enforcement agency or a correctional facility that relates to an
39 individual. Information that is protected by state or federal law,
40 including health information, shall not be entered into the court

1 record without the consent of the individual or their defense
2 attorney.

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

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

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

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

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

37 (c) If, following notice and hearing or entry of an agreed order
38 under (b) of this subsection, the court finds that competency has
39 been restored, the court shall lift the stay entered under (a) of

1 this subsection. If the court finds that competency has not been
2 restored, the court shall dismiss the proceedings without prejudice,
3 except that the court may order a further period of competency
4 restoration treatment if it finds that further treatment within the
5 time limits established by RCW 10.77.086 or 10.77.088 is likely to
6 restore competency, and a further period of treatment is allowed
7 under RCW 10.77.086 or 10.77.088.

8 (d) If at any time during the proceeding the court finds,
9 following notice and hearing, a defendant is not likely to regain
10 competency, the court shall dismiss the proceedings without prejudice
11 and refer the defendant for civil commitment evaluation or
12 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
13 10.77.088.

14 (e) Beginning October 1, 2023, if the court issues an order
15 directing revocation of the defendant's driver's license under (a) of
16 this subsection, and the court subsequently finds that the
17 defendant's competency has been restored, the court shall order the
18 clerk to transmit an order to the department of licensing for
19 reinstatement of the defendant's driver's license. The court may
20 direct the clerk to transmit an order reinstating the defendant's
21 driver's license before the end of one year for good cause upon the
22 petition of the defendant.

23 (2) If the defendant is referred for evaluation by a designated
24 crisis responder under this chapter, the designated crisis responder
25 shall provide prompt written notification of the results of the
26 evaluation and whether the person was detained. The notification
27 shall be provided to the court in which the criminal action was
28 pending, the prosecutor, the defense attorney in the criminal action,
29 and the facility that evaluated the defendant for competency.

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

33 (4) A defendant receiving medication for either physical or
34 mental problems shall not be prohibited from standing trial, if the
35 medication either enables the defendant to understand the proceedings
36 against him or her and to assist in his or her own defense, or does
37 not disable him or her from so understanding and assisting in his or
38 her own defense.

39 (5) At or before the conclusion of any commitment period provided
40 for by this section, the facility providing evaluation and treatment

1 shall provide to the court a written report of evaluation which meets
2 the requirements of RCW 10.77.060(3). For defendants charged with a
3 felony, the report following the second competency restoration period
4 or first competency restoration period if the defendant's
5 incompetence is determined to be solely due to a developmental
6 disability or the evaluator concludes that the defendant is not
7 likely to regain competency must include an assessment of the
8 defendant's future dangerousness which is evidence-based regarding
9 predictive validity.

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

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

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

24 (i) Adhere to medications or receive prescribed intramuscular
25 medication;

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

27 (iii) Comply with urinalysis or breathalyzer monitoring if
28 needed.

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

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

1 The court may order regular urinalysis testing. The outpatient
2 competency restoration program shall monitor the defendant during the
3 defendant's placement in the program and report any noncompliance or
4 significant changes with respect to the defendant to the department
5 and, if applicable, the forensic navigator.

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

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

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

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

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

14 (2) For a defendant whose highest charge is a class C felony, or
15 a class B felony that is not classified as violent under RCW
16 9.94A.030, the maximum time allowed for the initial competency
17 restoration period is 45 days if the defendant is referred for
18 inpatient competency restoration, or 90 days if the defendant is
19 referred for outpatient competency restoration, provided that if the
20 outpatient competency restoration placement is terminated and the
21 defendant is subsequently admitted to an inpatient facility, the
22 period of inpatient treatment during the first competency restoration
23 period under this subsection shall not exceed 45 days.

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

32 (4) On or before expiration of the initial competency restoration
33 period the court shall conduct a hearing to determine whether the
34 defendant is now competent to stand trial. If the court finds by a
35 preponderance of the evidence that the defendant is incompetent to
36 stand trial, the court may order an extension of the competency
37 restoration period for an additional period of 90 days, but the court
38 must at the same time set a date for a new hearing to determine the
39 defendant's competency to stand trial before the expiration of this
40 second restoration period. The defendant, the defendant's attorney,

1 and the prosecutor have the right to demand that the hearing be
2 before a jury. No extension shall be ordered for a second or third
3 competency restoration period if the defendant's incompetence has
4 been determined by the secretary to be solely the result of a
5 developmental disability which is such that competence is not
6 reasonably likely to be regained during an extension.

7 (5) ~~((A+))~~ (a) Except as provided in (b) of this subsection, at
8 the hearing upon the expiration of the second competency restoration
9 period, or at the end of the first competency restoration period if
10 the defendant is ineligible for a second or third competency
11 restoration period under subsection (4) of this section, if the jury
12 or court finds that the defendant is incompetent to stand trial, the
13 court shall dismiss the charges without prejudice and order the
14 defendant to be committed to ~~((a state hospital))~~ the department for
15 placement in a facility operated or contracted by the department for
16 up to 120 hours if the defendant has not undergone competency
17 restoration services or has engaged in outpatient competency
18 restoration services and up to 72 hours if the defendant engaged in
19 inpatient competency restoration services starting from admission to
20 the facility, excluding Saturdays, Sundays, and holidays, for
21 evaluation for the purpose of filing a civil commitment petition
22 under chapter 71.05 RCW. ~~((However, the))~~ If at the time the order to
23 dismiss the charges without prejudice is entered by the court the
24 defendant is already in a facility operated or contracted by the
25 department, the 72-hour or 120-hour period shall instead begin upon
26 department receipt of the court order.

27 (b) The court shall not dismiss the charges if the court or jury
28 finds that: ~~((a+))~~ (i) The defendant ~~((+i+))~~ (A) is a substantial
29 danger to other persons; or ~~((+ii+))~~ (B) presents a substantial
30 likelihood of committing criminal acts jeopardizing public safety or
31 security; and ~~((b+))~~ (ii) there is a substantial probability that
32 the defendant will regain competency within a reasonable period of
33 time. If the court or jury makes such a finding, the court may extend
34 the period of commitment for up to an additional six months.

35 (6) Any period of competency restoration treatment under this
36 section includes only the time the defendant is actually at the
37 facility or is actively participating in an outpatient competency
38 restoration program and is in addition to reasonable time for
39 transport to or from the facility.

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

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

12 (2)(a) For a defendant who is determined to be incompetent and
13 whose highest charge is a qualifying class C felony, the court shall
14 first consider all available and appropriate alternatives to
15 inpatient competency restoration. If such placement does not exist,
16 is not appropriate, or is not available in a timely manner, the court
17 shall commit the defendant to the custody of the secretary for
18 inpatient competency restoration. Available and appropriate
19 alternatives includes diversion to a community-based program and
20 dismissal of charges, commitment under chapter 71.05 RCW, or
21 outpatient competency restoration.

22 (b) If the defendant is subject to an order under chapter 71.05
23 RCW or proceedings under chapter 71.05 RCW have been initiated, there
24 is a rebuttable presumption that there is no compelling state
25 interest in ordering competency restoration treatment.

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

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

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

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

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

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

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

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

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

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

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

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

17 ~~((+2))~~ (4) (a) For a defendant whose highest charge is a class C
18 felony ~~that is not a qualifying class C felony,~~ or a class B felony
19 that is not classified as violent under RCW 9.94A.030, the maximum
20 time allowed for the initial competency restoration period is 45 days
21 if the defendant is referred for inpatient competency restoration, or
22 90 days if the defendant is referred for outpatient competency
23 restoration, provided that if the outpatient competency restoration
24 placement is terminated and the defendant is subsequently admitted to
25 an inpatient facility, the period of inpatient treatment during the
26 first competency restoration period under this subsection shall not
27 exceed 45 days.

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

36 (c) For any defendant with a felony charge that is admitted for
37 competency restoration with an accompanying court order for
38 involuntary medication under RCW 10.77.092, and the defendant is
39 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) (a) For defendants charged with a nonfelony, if the parties do
31 not agree on the diversion program, the defense may move the court
32 for an order dismissing the criminal charges without prejudice and
33 referring the defendant to the services described in the diversion
34 program. The court shall hold a hearing on this motion within 10
35 days. The court shall grant the defense motion if it finds by a
36 preponderance of the evidence that the defendant is amenable to the
37 services described in the diversion program and can safely receive
38 services in the community.

1 (b) (i) For defendants charged with a qualifying class C felony as
2 defined in RCW 10.77.086, if the parties do not agree on the
3 diversion program, the defense may move the court for an order
4 referring the defendant for a 30-day trial period in the diversion
5 program with periodic monitoring reports provided to the court and
6 parties. The court shall hold a hearing on this motion within 10
7 days. The court shall grant the motion if it finds by a preponderance
8 of the evidence that the defendant is amenable to the services
9 described in the diversion program and likely to engage in the
10 program.

11 (ii) Following the 30-day trial period, if the court finds by a
12 preponderance of the evidence that the defendant meaningfully engaged
13 in the diversion program, the court shall dismiss the criminal
14 charges without prejudice and refer the defendant to the services
15 described in the diversion program.

16 (4) Individuals who receive a dismissal of charges and referral
17 to services described in a diversion program shall have a forensic
18 navigator assigned to assist them for up to six months while engaging
19 in the services described in the diversion program. The forensic
20 navigator shall provide monthly status updates to the parties
21 regarding the individual's status in the diversion program.

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

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

27 (1) For purposes of determining whether a court may authorize
28 involuntary medication for the purpose of competency restoration
29 pursuant to RCW 10.77.084 and for maintaining the level of
30 restoration in the jail following the restoration period, a pending
31 charge involving any one or more of the following crimes is a serious
32 offense per se in the context of competency restoration:

33 (a) Any violent offense, sex offense, serious traffic offense,
34 and most serious offense, as those terms are defined in RCW
35 9.94A.030;

36 (b) Any offense, except nonfelony counterfeiting offenses,
37 included in crimes against persons in RCW 9.94A.411;

38 (c) Any offense contained in chapter 9.41 RCW (firearms and
39 dangerous weapons);

1 (d) Any offense listed as domestic violence in RCW 10.99.020;

2 (e) Any offense listed as a harassment offense in chapter 9A.46
3 RCW, except for criminal trespass in the first or second degree;

4 (f) Any violation of chapter 69.50 RCW that is a class B felony;
5 or

6 (g) Any city or county ordinance or statute that is equivalent to
7 an offense referenced in this subsection.

8 (2) Anytime the secretary seeks a court order authorizing the
9 involuntary medication for purposes of competency restoration
10 pursuant to RCW 10.77.084, the secretary's petition must also seek
11 authorization to continue involuntary medication for purposes of
12 maintaining the level of restoration in the jail or juvenile
13 detention facility following the restoration period.

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

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

24 (i) The charge includes an allegation that the defendant actually
25 inflicted bodily or emotional harm on another person or that the
26 defendant created a reasonable apprehension of bodily or emotional
27 harm to another;

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

30 (iii) The number and nature of related charges pending against
31 the defendant;

32 (iv) The length of potential confinement if the defendant is
33 convicted; and

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

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

38 (1) When an individual has a prescription for an antipsychotic,
39 antidepressant, antiepileptic, or other drug prescribed to the

1 individual to treat a serious mental illness by a state hospital or
2 other state facility or a behavioral health agency or other certified
3 medical provider, and the individual is medically stable on the drug,
4 a jail or juvenile detention facility shall continue prescribing the
5 prescribed drug and may not require the substitution of a different
6 drug in a given therapeutic class, except under the following
7 circumstances:

8 (a) The substitution is for a generic version of a name brand
9 drug and the generic version is chemically identical to the name
10 brand drug; or

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

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

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

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

24 (1) Following a competency evaluation under RCW 10.77.060,
25 individuals who are found not competent to stand trial and not
26 restorable due to an intellectual or developmental disability,
27 dementia, or traumatic brain injury, shall not be referred for
28 competency restoration services unless the highest current criminal
29 charge is a violent offense or sex offense as defined in RCW
30 9.94A.030. A defendant with a prior finding under this subsection may
31 only be referred for competency restoration services if the highest
32 charge under the new proceedings is a violent offense or sex offense
33 as defined in RCW 9.94A.030.

34 (2) The department shall develop a process for connecting
35 individuals who have been found not competent to stand trial due to
36 an intellectual or developmental disability, dementia, or traumatic
37 brain injury to available wraparound services and supports in
38 community-based settings, which may include residential supports. The
39 process shall include provisions for individuals who are current

1 clients of the department's developmental disabilities administration
2 or aging and long-term support administration and for individuals who
3 are not current clients of the department.

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

7 (i) Coordinate with the individual's services providers to
8 determine if the individual can return to the same or like services,
9 or determine appropriate new community-based services. This shall
10 include updating the individual's service plan and identifying and
11 coordinating potential funding for any additional supports to
12 stabilize the individual in community-based settings funded by the
13 developmental disabilities administration or aging and long-term
14 support administration so that the individual does not lose existing
15 services, including submitting any exceptions to rule for additional
16 services;

17 (ii) Conduct a current service eligibility assessment and send
18 referral packets to all community-based service providers for
19 services for which the individual is eligible; and

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

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

26 (i) Conduct an eligibility determination for services and send
27 referral packets to service providers for all relevant community-
28 based services for which the individual is eligible. This process
29 must include identifying and coordinating funding for any additional
30 supports that are needed to stabilize the individual in any
31 community-based setting funded by the developmental disabilities
32 administration or aging and long-term support administration,
33 including submitting any necessary exceptions to rule for additional
34 services; and

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

1 (3) The department shall offer to transition the individual in
2 services either directly from the jail or as soon thereafter as may
3 be practicable, without maintaining the individual at an inpatient
4 facility for longer than is clinically necessary. Nothing in this
5 subsection prohibits the department from returning the individual to
6 their home or to another less restrictive setting if such setting is
7 appropriate, which may include provision of supportive services to
8 help the person maintain stability. The individual is not required to
9 accept developmental disabilities administration, aging and long-term
10 support administration, or other diversionary services as a condition
11 of having the individual's criminal case dismissed without prejudice,
12 provided the individual meets the criteria of subsection (1) of this
13 section.

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

16 An outpatient competency restoration program must include access
17 to a prescriber.

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

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

1 evaluation is appropriate to reassess the individual's need for
2 competency restoration treatment.

3 (2) The department shall establish a memorandum of understanding
4 and any contracts needed with the jail to address the terms and
5 conditions of allowing access to defendants and their records subject
6 to the requirements of this section.

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

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

12 **Sec. 17.** RCW 10.77.065 and 2019 c 325 s 5006 are each amended to
13 read as follows:

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

21 (ii) A copy of the report and recommendation shall be provided to
22 the designated crisis responder, the prosecuting attorney, the
23 defense attorney, and the professional person at the local
24 correctional facility where the defendant is being held, or if there
25 is no professional person, to the person designated under (a) (iv) of
26 this subsection. Upon request, the evaluator shall also provide
27 copies of any source documents relevant to the evaluation to the
28 designated crisis responder.

29 (iii) Any facility providing inpatient services related to
30 competency shall discharge the defendant as soon as the facility
31 determines that the defendant is competent to stand trial. Discharge
32 shall not be postponed during the writing and distribution of the
33 evaluation report. Distribution of an evaluation report by a facility
34 providing inpatient services shall ordinarily be accomplished within
35 two working days or less following the final evaluation of the
36 defendant. If the defendant is discharged to the custody of a local
37 correctional facility, the local correctional facility must continue
38 the medication regimen prescribed by the facility, when clinically

1 appropriate, unless the defendant refuses to cooperate with
2 medication and an involuntary medication order by the court has not
3 been entered.

4 (iv) If there is no professional person at the local correctional
5 facility, the local correctional facility shall designate a
6 professional person as defined in RCW 71.05.020 or, in cooperation
7 with the behavioral health administrative services organization, a
8 professional person at the behavioral health administrative services
9 organization to receive the report and recommendation.

10 (v) Upon commencement of a defendant's evaluation in the local
11 correctional facility, the local correctional facility must notify
12 the evaluator of the name of the professional person, or person
13 designated under (a)(iv) of this subsection, to receive the report
14 and recommendation.

15 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the
16 person should be evaluated by a designated crisis responder under
17 chapter 71.05 RCW, the court shall order such evaluation be conducted
18 prior to release from confinement when the person is acquitted or
19 convicted and sentenced to confinement for twenty-four months or
20 less, or when charges are dismissed pursuant to a finding of
21 incompetent to stand trial.

22 (2) The designated crisis responder shall provide written
23 notification within twenty-four hours of the results of the
24 determination whether to commence proceedings under chapter 71.05
25 RCW. The notification shall be provided to the persons identified in
26 subsection (1)(a) of this section.

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

30 (4) A facility conducting a civil commitment evaluation under RCW
31 10.77.086(~~((4))~~) (7) or 10.77.088(~~((1)(e)(ii))~~) (5)(b) that makes a
32 determination to release the person instead of filing a civil
33 commitment petition must provide written notice to the prosecutor and
34 defense attorney at least twenty-four hours prior to release. The
35 notice may be given by email, facsimile, or other means reasonably
36 likely to communicate the information immediately.

37 (5) The fact of admission and all information and records
38 compiled, obtained, or maintained in the course of providing services
39 under this chapter may also be disclosed to the courts solely to

1 prevent the entry of any evaluation or treatment order that is
2 inconsistent with any order entered under chapter 71.05 RCW.

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

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

8 (1) Such person after having been taken into custody for
9 evaluation and treatment has threatened, attempted, or inflicted: (a)
10 Physical harm upon the person of another or himself or herself, or
11 substantial damage upon the property of another, and (b) as a result
12 of a behavioral health disorder presents a likelihood of serious
13 harm; or

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

19 (3) Such person has been determined to be incompetent and
20 criminal charges have been dismissed pursuant to RCW 10.77.086(~~(+4)~~)
21 (7), and has committed acts constituting a felony, and as a result of
22 a behavioral health disorder, presents a substantial likelihood of
23 repeating similar acts.

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

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

32 (4) Such person is gravely disabled.

33 **Sec. 19.** RCW 71.05.290 and 2022 c 210 s 16 are each amended to
34 read as follows:

35 (1) At any time during a person's 14-day intensive treatment
36 period, the professional person in charge of a treatment facility or
37 his or her professional designee or the designated crisis responder
38 may petition the superior court for an order requiring such person to

1 undergo an additional period of treatment. Such petition must be
2 based on one or more of the grounds set forth in RCW 71.05.280.

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

6 (A) One physician, physician assistant, or psychiatric advanced
7 registered nurse practitioner; and

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

10 (ii) If the petition is for substance use disorder treatment, the
11 petition may be signed by a substance use disorder professional
12 instead of a mental health professional and by an advanced registered
13 nurse practitioner instead of a psychiatric advanced registered nurse
14 practitioner.

15 (b) The affidavits shall describe in detail the behavior of the
16 detained person which supports the petition and shall explain what,
17 if any, less restrictive treatments which are alternatives to
18 detention are available to such person, and shall state the
19 willingness of the affiant to testify to such facts in subsequent
20 judicial proceedings under this chapter. If less restrictive
21 alternative treatment is sought, the petition shall set forth any
22 recommendations for less restrictive alternative treatment services.

23 (3) If a person has been determined to be incompetent pursuant to
24 RCW 10.77.086(~~(4)~~) (7), then the professional person in charge of
25 the treatment facility or his or her professional designee or the
26 designated crisis responder may directly file a petition for 180-day
27 treatment under RCW 71.05.280(3), or for 90-day treatment under RCW
28 71.05.280 (1), (2), or (4). No petition for initial detention or 14-
29 day detention is required before such a petition may be filed.

30 **Sec. 20.** RCW 71.05.300 and 2020 c 302 s 43 are each amended to
31 read as follows:

32 (1) The petition for ninety day treatment shall be filed with the
33 clerk of the superior court at least three days before expiration of
34 the fourteen-day period of intensive treatment. The clerk shall set a
35 trial setting date as provided in RCW 71.05.310 on the next judicial
36 day after the date of filing the petition and notify the designated
37 crisis responder. The designated crisis responder shall immediately
38 notify the person detained, his or her attorney, if any, and his or
39 her guardian or conservator, if any, the prosecuting attorney, and

1 the behavioral health administrative services organization
2 administrator, and provide a copy of the petition to such persons as
3 soon as possible. The behavioral health administrative services
4 organization administrator or designee may review the petition and
5 may appear and testify at the full hearing on the petition.

6 (2) The attorney for the detained person shall advise him or her
7 of his or her right to be represented by an attorney, his or her
8 right to a jury trial, and, if the petition is for commitment for
9 mental health treatment, his or her loss of firearm rights if
10 involuntarily committed. If the detained person is not represented by
11 an attorney, or is indigent or is unwilling to retain an attorney,
12 the court shall immediately appoint an attorney to represent him or
13 her. The court shall, if requested, appoint a reasonably available
14 licensed physician, physician assistant, psychiatric advanced
15 registered nurse practitioner, psychologist, psychiatrist, or other
16 professional person, designated by the detained person to examine and
17 testify on behalf of the detained person.

18 (3) The court may, if requested, also appoint a professional
19 person as defined in RCW 71.05.020 to seek less restrictive
20 alternative courses of treatment and to testify on behalf of the
21 detained person. In the case of a person with a developmental
22 disability who has been determined to be incompetent pursuant to RCW
23 10.77.086(~~(4)~~) (7), the appointed professional person under this
24 section shall be a developmental disabilities professional.

25 **Sec. 21.** RCW 71.05.425 and 2021 c 264 s 19 are each amended to
26 read as follows:

27 (1)(a) Except as provided in subsection (2) of this section, at
28 the earliest possible date, and in no event later than thirty days
29 before conditional release, final release, authorized leave under RCW
30 71.05.325(2), or transfer to a facility other than a state mental
31 hospital, the superintendent shall send written notice of conditional
32 release, release, authorized leave, or transfer of a person committed
33 under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a
34 sex, violent, or felony harassment offense pursuant to RCW
35 10.77.086(~~(4)~~) (7) to the following:

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

38 (ii) The sheriff of the county in which the person will reside;

39 and

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

3 (b) The same notice as required by (a) of this subsection shall
4 be sent to the following, if such notice has been requested in
5 writing about a specific person committed under RCW 71.05.280(3) or
6 71.05.320(4)(c) following dismissal of a sex, violent, or felony
7 harassment offense pursuant to RCW 10.77.086(~~((4))~~) (7):

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

12 (ii) Any witnesses who testified against the person in any court
13 proceedings;

14 (iii) Any person specified in writing by the prosecuting
15 attorney. Information regarding victims, next of kin, or witnesses
16 requesting the notice, information regarding any other person
17 specified in writing by the prosecuting attorney to receive the
18 notice, and the notice are confidential and shall not be available to
19 the person committed under this chapter; and

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

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

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

28 (2) If a person committed under RCW 71.05.280(3) or
29 71.05.320(4)(c) following dismissal of a sex, violent, or felony
30 harassment offense pursuant to RCW 10.77.086(~~((4))~~) (7) escapes, the
31 superintendent shall immediately notify, by the most reasonable and
32 expedient means available, the chief of police of the city and the
33 sheriff of the county in which the person escaped and in which the
34 person resided immediately before the person's arrest and the
35 prosecuting attorney of the county in which the criminal charges
36 against the committed person were dismissed. If previously requested,
37 the superintendent shall also notify the witnesses and the victim of
38 the sex, violent, or felony harassment offense that was dismissed
39 pursuant to RCW 10.77.086(~~((4))~~) (7) preceding commitment under RCW
40 71.05.280(3) or 71.05.320(4) or the victim's next of kin if the crime

1 was a homicide. In addition, the secretary shall also notify
2 appropriate parties pursuant to RCW 70.02.230(2)(o). If the person is
3 recaptured, the superintendent shall send notice to the persons
4 designated in this subsection as soon as possible but in no event
5 later than two working days after the department of social and health
6 services learns of such recapture.

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

10 (4) The superintendent shall send the notices required by this
11 chapter to the last address provided to the department of social and
12 health services by the requesting party. The requesting party shall
13 furnish the department of social and health services with a current
14 address.

15 (5) For purposes of this section the following terms have the
16 following meanings:

17 (a) "Violent offense" means a violent offense under RCW
18 9.94A.030;

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

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

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

24 **Sec. 22.** RCW 71.09.025 and 2009 c 409 s 2 are each amended to
25 read as follows:

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

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

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

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

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

4 (b) The agency shall provide the prosecuting agency with all
5 relevant information including but not limited to the following
6 information:

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

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

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

14 (iv) A current record of all prior arrests and convictions, and
15 full police case reports relating to those arrests and convictions;
16 and

17 (v) A current mental health evaluation or mental health records
18 review.

19 (c) The prosecuting agency has the authority, consistent with RCW
20 72.09.345(~~(3)~~) (4), to obtain all records relating to the person if
21 the prosecuting agency deems such records are necessary to fulfill
22 its duties under this chapter. The prosecuting agency may only
23 disclose such records in the course of performing its duties pursuant
24 to this chapter, unless otherwise authorized by law.

25 (d) The prosecuting agency has the authority to utilize the
26 inquiry judge procedures of chapter 10.27 RCW prior to the filing of
27 any action under this chapter to seek the issuance of compulsory
28 process for the production of any records necessary for a
29 determination of whether to seek the civil commitment of a person
30 under this chapter. Any records obtained pursuant to this process may
31 only be disclosed by the prosecuting agency in the course of
32 performing its duties pursuant to this chapter, or unless otherwise
33 authorized by law.

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

36 (3) As used in this section, "agency with jurisdiction" means
37 that agency with the authority to direct the release of a person
38 serving a sentence or term of confinement and includes the department
39 of corrections, the indeterminate sentence review board, and the
40 department of social and health services.

1 **Sec. 23.** RCW 71.09.030 and 2009 c 409 s 3 are each amended to
2 read as follows:

3 (1) A petition may be filed alleging that a person is a sexually
4 violent predator and stating sufficient facts to support such
5 allegation when it appears that: (a) A person who at any time
6 previously has been convicted of a sexually violent offense is about
7 to be released from total confinement; (b) a person found to have
8 committed a sexually violent offense as a juvenile is about to be
9 released from total confinement; (c) a person who has been charged
10 with a sexually violent offense and who has been determined to be
11 incompetent to stand trial is about to be released, or has been
12 released, pursuant to RCW 10.77.086(~~((4))~~) (7); (d) a person who has
13 been found not guilty by reason of insanity of a sexually violent
14 offense is about to be released, or has been released, pursuant to
15 RCW 10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (e) a person
16 who at any time previously has been convicted of a sexually violent
17 offense and has since been released from total confinement and has
18 committed a recent overt act.

19 (2) The petition may be filed by:

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

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

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

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

29 (b) The attorney general, if requested by the county prosecuting
30 attorney identified in (a) of this subsection. If the county
31 prosecuting attorney requests that the attorney general file and
32 prosecute a case under this chapter, then the county shall charge the
33 attorney general only the fees, including filing and jury fees, that
34 would be charged and paid by the county prosecuting attorney, if the
35 county prosecuting attorney retained the case.

36 **Sec. 24.** RCW 71.09.060 and 2009 c 409 s 6 are each amended to
37 read as follows:

38 (1) The court or jury shall determine whether, beyond a
39 reasonable doubt, the person is a sexually violent predator. In

1 determining whether or not the person would be likely to engage in
2 predatory acts of sexual violence if not confined in a secure
3 facility, the fact finder may consider only placement conditions and
4 voluntary treatment options that would exist for the person if
5 unconditionally released from detention on the sexually violent
6 predator petition. The community protection program under RCW
7 71A.12.230 may not be considered as a placement condition or
8 treatment option available to the person if unconditionally released
9 from detention on a sexually violent predator petition. When the
10 determination is made by a jury, the verdict must be unanimous.

11 If, on the date that the petition is filed, the person was living
12 in the community after release from custody, the state must also
13 prove beyond a reasonable doubt that the person had committed a
14 recent overt act. If the state alleges that the prior sexually
15 violent offense that forms the basis for the petition for commitment
16 was an act that was sexually motivated as provided in RCW
17 71.09.020(~~((15)(e))~~) (18)(c), the state must prove beyond a
18 reasonable doubt that the alleged sexually violent act was sexually
19 motivated as defined in RCW 9.94A.030.

20 If the court or jury determines that the person is a sexually
21 violent predator, the person shall be committed to the custody of the
22 department of social and health services for placement in a secure
23 facility operated by the department of social and health services for
24 control, care, and treatment until such time as: (a) The person's
25 condition has so changed that the person no longer meets the
26 definition of a sexually violent predator; or (b) conditional release
27 to a less restrictive alternative as set forth in RCW 71.09.092 is in
28 the best interest of the person and conditions can be imposed that
29 would adequately protect the community.

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

33 If the jury is unable to reach a unanimous verdict, the court
34 shall declare a mistrial and set a retrial within forty-five days of
35 the date of the mistrial unless the prosecuting agency earlier moves
36 to dismiss the petition. The retrial may be continued upon the
37 request of either party accompanied by a showing of good cause, or by
38 the court on its own motion in the due administration of justice
39 provided that the respondent will not be substantially prejudiced. In

1 no event may the person be released from confinement prior to retrial
2 or dismissal of the case.

3 (2) If the person charged with a sexually violent offense has
4 been found incompetent to stand trial, and is about to be or has been
5 released pursuant to RCW 10.77.086(~~((4))~~) (7), and his or her
6 commitment is sought pursuant to subsection (1) of this section, the
7 court shall first hear evidence and determine whether the person did
8 commit the act or acts charged if the court did not enter a finding
9 prior to dismissal under RCW 10.77.086(~~((4))~~) (7) that the person
10 committed the act or acts charged. The hearing on this issue must
11 comply with all the procedures specified in this section. In
12 addition, the rules of evidence applicable in criminal cases shall
13 apply, and all constitutional rights available to defendants at
14 criminal trials, other than the right not to be tried while
15 incompetent, shall apply. After hearing evidence on this issue, the
16 court shall make specific findings on whether the person did commit
17 the act or acts charged, the extent to which the person's
18 incompetence or developmental disability affected the outcome of the
19 hearing, including its effect on the person's ability to consult with
20 and assist counsel and to testify on his or her own behalf, the
21 extent to which the evidence could be reconstructed without the
22 assistance of the person, and the strength of the prosecution's case.
23 If, after the conclusion of the hearing on this issue, the court
24 finds, beyond a reasonable doubt, that the person did commit the act
25 or acts charged, it shall enter a final order, appealable by the
26 person, on that issue, and may proceed to consider whether the person
27 should be committed pursuant to this section.

28 (3) Except as otherwise provided in this chapter, the state shall
29 comply with RCW 10.77.220 while confining the person. During all
30 court proceedings where the person is present, the person shall be
31 detained in a secure facility. If the proceedings last more than one
32 day, the person may be held in the county jail for the duration of
33 the proceedings, except the person may be returned to the
34 department's custody on weekends and court holidays if the court
35 deems such a transfer feasible. The county shall be entitled to
36 reimbursement for the cost of housing and transporting the person
37 pursuant to rules adopted by the secretary. The department shall not
38 place the person, even temporarily, in a facility on the grounds of
39 any state mental facility or regional habilitation center because
40 these institutions are insufficiently secure for this population.

1 (4) A court has jurisdiction to order a less restrictive
2 alternative placement only after a hearing ordered pursuant to RCW
3 71.09.090 following initial commitment under this section and in
4 accord with the provisions of this chapter.

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

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

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

16 NEW SECTION. **Sec. 27.** Section 13 of this act takes effect
17 December 1, 2023.

18 NEW SECTION. **Sec. 28.** If specific funding for the purposes of
19 this act, referencing this act by bill or chapter number, is not
20 provided by June 30, 2023, in the omnibus appropriations act, this
21 act is null and void."

22 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 if the
defendant may have dementia or another neurocognitive disorder.

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.

Removes provision stating that a court's order for inpatient
restoration must specify whether DSHS has authority to change the
defendant's placement to a step-down facility or outpatient
competency restoration if clinically appropriate.

Establishes new 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.

(a) 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 the parties do not agree to a diversion program, the court may grant a motion for a 30-day trial period in a diversion program with periodic monitoring, and following the 30-day trial period, may dismiss the criminal charges without prejudice and refer the defendant to the services described in the diversion program if the court finds that the defendant meaningfully engaged in the diversion program.

(b) Provides that for a defendant charged with a qualifying class C felony who is incompetent, the court must first consider all available and appropriate alternatives to inpatient competency restoration, which include diversion to a community-based program, commitment under chapter 71.05 RCW, or outpatient competency restoration. Provides that if such placement does not exist, is not appropriate, or is not available in a timely manner, the court must order inpatient competency restoration. Creates a rebuttable presumption that there is no compelling state interest in ordering competency restoration treatment if the defendant is subject to a civil involuntary commitment order or proceedings for civil involuntary commitment have been initiated.

(c) 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.

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

Removes language requiring DSHS to develop a program with wraparound services and housing supports for persons who have had involvement in the criminal justice system and been found incompetent to stand trial based on an intellectual or developmental disability or dementia. Instead establishes requirements relating to persons found incompetent to stand trial due to an intellectual or developmental disability, dementia, or a traumatic brain injury, including:

(1) 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.

(2) Requiring DSHS to develop a process for connecting these individuals to available wraparound services and community-based supports. Specifies requirements for individuals who are current clients of 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 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 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, and requires the DSHS to establish a memorandum of understanding and any contracts needed with the jail to address the terms and conditions of allowing access to defendants and their records.

Removes the provision requiring the Health Care Authority, subject to funding, to take steps to increase compensation for staff in outpatient competency restoration programs.

Removes the provision requiring the DSHS, subject to funding, to identify locations that may be commissioned or renovated for use in treating persons committed to DSHS for competency evaluation or restoration, civil conversion, or treatment following acquittal by reason of insanity, and providing that DSHS may provide capital grants to entities to accomplish these purposes.

Provides that the act is null and void unless specific funding for the act is provided in the omnibus appropriations act.

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