

E2SSB 5440 - H AMD 777

By Representative Farivar

ADOPTED 04/21/2023

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.

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. The department shall inform
38 the forensic navigator about availability of services.

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 recall the order for competency
7 evaluation and may issue a warrant for the failure to appear.

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 or
30 outpatient services and be responsive to inquiries by the parties
31 about treatment status;

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

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

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

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

39 (iv) Providing information to the court concerning the
40 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 (viii) Planning for a coordinated transition of the individual to
11 a case manager in the community behavioral health system;

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

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

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

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

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

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

34 (6) The signed order for competency evaluation from the court
35 shall serve as authority for the forensic navigator to be given
36 access to all records held by a behavioral health, educational, or
37 law enforcement agency or a correctional facility that relates to an
38 individual. Information that is protected by state or federal law,
39 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) ~~((1f))~~ (a) Except as otherwise provided in this section, if
4 the defendant is charged with a felony and determined to be
5 incompetent, until he or she has regained the competency necessary to
6 understand the proceedings against him or her and assist in his or
7 her own defense, but in any event for a period of no longer than 90
8 days, the court shall commit the defendant to the custody of the
9 secretary for inpatient competency restoration, or may alternatively
10 order the defendant to receive outpatient competency restoration
11 based on a recommendation from a forensic navigator and input from
12 the parties.

13 (b) For a defendant who is determined to be incompetent and whose
14 highest charge is a class C felony other than assault in the third
15 degree under RCW 9A.36.031(1) (d) or (f), felony physical control of
16 a vehicle under RCW 46.61.504(6), felony hit and run resulting in
17 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW
18 9A.36.080, a class C felony with a domestic violence designation, a
19 class C felony sex offense as defined in RCW 9.94A.030, or a class C
20 felony with a sexual motivation allegation, the court shall first
21 consider all available and appropriate alternatives to inpatient
22 competency restoration. The court shall dismiss the proceedings
23 without prejudice upon agreement of the parties if the forensic
24 navigator has found an appropriate and available diversion program
25 willing to accept the defendant.

26 (2)(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))~~ (3) For a defendant whose highest charge is a class C
18 felony, or a class B felony that is not classified as violent under
19 RCW 9.94A.030, the maximum time allowed for the initial competency
20 restoration period is 45 days if the defendant is referred for
21 inpatient competency restoration, or 90 days if the defendant is
22 referred for outpatient competency restoration, provided that if the
23 outpatient competency restoration placement is terminated and the
24 defendant is subsequently admitted to an inpatient facility, the
25 period of inpatient treatment during the first competency restoration
26 period under this subsection shall not exceed 45 days.

27 ~~((+3))~~ (4) When any defendant whose highest charge is a class C
28 felony other than assault in the third degree under RCW 9A.36.031(1)
29 (d) or (f), felony physical control of a vehicle under RCW
30 46.61.504(6), felony hit and run resulting in injury under RCW
31 46.52.020(4)(b), a hate crime offense under RCW 9A.36.080, a class C
32 felony with a domestic violence designation, a class C felony sex
33 offense as defined in RCW 9.94A.030, or a class C felony with a
34 sexual motivation allegation is admitted for inpatient competency
35 restoration with an accompanying court order for involuntary
36 medication under RCW 10.77.092, and the defendant is found not
37 competent to stand trial following that period of competency
38 restoration, the court shall dismiss the charges pursuant to
39 subsection (7) of this section.

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

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

27 ~~((5) A#)~~ (7)(a) Except as provided in (b) of this subsection,
28 at the hearing upon the expiration of the second competency
29 restoration period, or at the end of the first competency restoration
30 period if the defendant is ineligible for a second or third
31 competency restoration period under subsection ~~((4))~~ (3) or (6) of
32 this section, if the jury or court finds that the defendant is
33 incompetent to stand trial, the court shall dismiss the charges
34 without prejudice and order the defendant to be committed to ((a
35 state hospital)) the department for placement in a facility operated
36 or contracted by the department for up to 120 hours if the defendant
37 has not undergone competency restoration services or has engaged in
38 outpatient competency restoration services, and up to 72 hours if the
39 defendant engaged in inpatient competency restoration services
40 starting from admission to the facility, excluding Saturdays,

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

7 (b) The court shall not dismiss the charges if the defendant is
8 eligible for a second or third competency restoration period under
9 subsection (6) of this section and the court or jury finds that:

10 (~~(a)~~) (i) The defendant (~~(i)~~) (A) is a substantial danger to
11 other persons; or (~~(ii)~~) (B) presents a substantial likelihood of
12 committing criminal acts jeopardizing public safety or security; and
13 (~~(b)~~) (ii) there is a substantial probability that the defendant
14 will regain competency within a reasonable period of time. If the
15 court or jury makes such a finding, the court may extend the period
16 of commitment for up to an additional six months.

17 (~~(6)~~) (8) Any period of competency restoration treatment under
18 this section includes only the time the defendant is actually at the
19 facility or is actively participating in an outpatient competency
20 restoration program and is in addition to reasonable time for
21 transport to or from the facility.

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

24 (1) If the defendant is charged with a nonfelony crime which is a
25 serious offense as identified in RCW 10.77.092 and found by the court
26 to be not competent, the court shall first consider all available and
27 appropriate alternatives to inpatient competency restoration. If the
28 parties agree that there is an appropriate diversion program
29 available to accept the defendant, the court shall dismiss the
30 proceedings without prejudice and refer the defendant to the
31 recommended diversion program. If the parties do not agree that there
32 is an appropriate diversion program available to accept the
33 defendant, then the court:

34 (a) Shall dismiss the proceedings without prejudice and detain
35 the defendant (~~for sufficient time to allow the designated crisis~~
36 ~~responder to evaluate the defendant and consider initial detention~~
37 ~~proceedings under chapter 71.05 RCW)) pursuant to subsection (6) of
38 this section, unless the prosecutor objects to the dismissal and
39 provides notice of a motion for an order for competency restoration~~

1 treatment, in which case the court shall schedule a hearing within
2 seven days.

3 (b) At the hearing, the prosecuting attorney must establish that
4 there is a compelling state interest to order competency restoration
5 treatment for the defendant. The court may consider prior criminal
6 history, prior history in treatment, prior history of violence, the
7 quality and severity of the pending charges, any history that
8 suggests whether competency restoration treatment is likely to be
9 successful, in addition to the factors listed under RCW 10.77.092. If
10 the defendant is subject to an order under chapter 71.05 RCW or
11 proceedings under chapter 71.05 RCW have been initiated, there is a
12 rebuttable presumption that there is no compelling state interest in
13 ordering competency restoration treatment. If the prosecuting
14 attorney proves by a preponderance of the evidence that there is a
15 compelling state interest in ordering competency restoration
16 treatment, then the court shall issue an order in accordance with
17 subsection (2) of this section.

18 (2) (a) If a court finds pursuant to subsection (1)(b) of this
19 section that there is a compelling state interest in pursuing
20 competency restoration treatment, the court shall ~~((commit the~~
21 ~~defendant to the custody of the secretary for inpatient competency~~
22 ~~restoration, or may alternatively))~~ order the defendant to receive
23 outpatient competency restoration ~~((based on a recommendation from a~~
24 ~~forensic navigator and input from the parties))~~ consistent with the
25 recommendation of the forensic navigator, unless the court finds that
26 an order for outpatient competency restoration is inappropriate
27 considering the health and safety of the defendant and risks to
28 public safety.

29 ~~((a))~~ (b) To be eligible for an order for outpatient competency
30 restoration, a defendant must be ~~((clinically appropriate and be))~~
31 willing to:

32 (i) Adhere to medications or receive prescribed intramuscular
33 medication;

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

35 (iii) Comply with urinalysis or breathalyzer monitoring if
36 needed.

37 ~~((b))~~ (c) If the court orders inpatient competency restoration,
38 the department shall place the defendant in an appropriate facility
39 of the department for competency restoration under subsection (3) of
40 this section.

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

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

37 (i) The department may authorize a peace officer to detain the
38 defendant into emergency custody for transport to the designated
39 inpatient competency restoration facility. If medical clearance is
40 required by the designated competency restoration facility before

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

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

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

22 (g) If the court does not order the defendant to receive
23 outpatient competency restoration under (a) of this subsection, the
24 court shall commit the defendant to the department for placement in a
25 facility operated or contracted by the department for inpatient
26 competency restoration.

27 (3) The placement under subsection (2) of this section shall not
28 exceed 29 days if the defendant is ordered to receive inpatient
29 competency restoration, and shall not exceed 90 days if the defendant
30 is ordered to receive outpatient competency restoration. The court
31 may order any combination of this subsection, but the total period of
32 inpatient competency restoration may not exceed 29 days.

33 (4) Beginning October 1, 2023, if the defendant is charged with a
34 serious traffic offense under RCW 9.94A.030, the court may order the
35 clerk to transmit an order to the department of licensing for
36 revocation of the defendant's driver's license for a period of one
37 year. The court shall direct the clerk to transmit an order to the
38 department of licensing reinstating the defendant's driver's license
39 if the defendant is subsequently restored to competency, and may do

1 so at any time before the end of one year for good cause upon the
2 petition of the defendant.

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

9 ~~((5))~~ (6)(a) If the proceedings are dismissed under RCW
10 10.77.084 and the defendant was on conditional release at the time of
11 dismissal, the court shall order the designated crisis responder
12 within that county to evaluate the defendant pursuant to chapter
13 71.05 RCW. The evaluation may be conducted in any location chosen by
14 the professional.

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

26 ~~((6))~~ (7) If the defendant is charged with a nonfelony crime
27 that is not a serious offense as defined in RCW 10.77.092 and found
28 by the court to be not competent, the court may stay or dismiss
29 proceedings and detain the defendant for sufficient time to allow the
30 designated crisis responder to evaluate the defendant and consider
31 initial detention proceedings under chapter 71.05 RCW. The court must
32 give notice to all parties at least 24 hours before the dismissal of
33 any proceeding under this subsection, and provide an opportunity for
34 a hearing on whether to dismiss the proceedings.

35 ~~((7))~~ (8) If at any time the court dismisses charges under
36 subsections (1) through ~~((6))~~ (7) of this section, the court shall
37 make a finding as to whether the defendant has a history of one or
38 more violent acts. If the court so finds, the defendant is barred
39 from the possession of firearms until a court restores his or her
40 right to possess a firearm under RCW 9.41.047. The court shall state

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

5 ~~((+8))~~ (9) Any period of competency restoration treatment under
6 this section includes only the time the defendant is actually at the
7 facility or is actively participating in an outpatient competency
8 restoration program and is in addition to reasonable time for
9 transport to or from the facility.

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

12 (1) In counties with a forensic navigator program, a forensic
13 navigator shall:

14 (a) Meet, interview, and observe all defendants charged with a
15 nonfelony, or a class C felony other than assault in the third degree
16 under RCW 9A.36.031(1) (d) or (f), felony physical control of a
17 vehicle under RCW 46.61.504(6), felony hit and run resulting in
18 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW
19 9A.36.080, a class C felony with a domestic violence designation, a
20 class C felony sex offense as defined in RCW 9.94A.030, or a class C
21 felony with a sexual motivation allegation, who have had two or more
22 cases dismissed due to a finding of incompetency to stand trial in
23 the preceding 24 months and who are at risk for a finding of
24 incompetency under their current charge. The forensic navigator shall
25 determine the defendants' willingness to engage with services under
26 this section; and

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

32 (2) The court shall dismiss the criminal charges upon agreement
33 of the parties that the defendant has been accepted into the
34 diversion program recommended by the forensic navigator.

35 (3)(a) For defendants charged with a nonfelony, the court may
36 order the defendant to a diversion program if recommended by the
37 forensic navigator. Upon engagement with the diversion program, the
38 defense may move to dismiss the charges without prejudice. The court
39 shall hold a hearing on this motion within 10 days. The court shall

1 grant the defense motion if it finds by a preponderance of the
2 evidence that the defendant is amenable to the services described in
3 the diversion program and can safely receive services in the
4 community.

5 (b) For defendants charged with a class C felony other than
6 assault in the third degree under RCW 9A.36.031(1) (d) or (f), felony
7 physical control of a vehicle under RCW 46.61.504(6), felony hit and
8 run resulting in injury under RCW 46.52.020(4)(b), a hate crime
9 offense under RCW 9A.36.080, a class C felony with a domestic
10 violence designation, a class C felony sex offense as defined in RCW
11 9.94A.030, or a class C felony with a sexual motivation allegation,
12 the defense may move for dismissal of the charges without prejudice
13 if the defendant is currently subject to a civil commitment order
14 under chapter 71.05 RCW. The court shall grant the defense motion
15 upon confirmation of an available treatment plan under chapter 71.05
16 RCW.

17 (4) Individuals who are referred to a diversion program described
18 in this section shall have a forensic navigator assigned to assist
19 them for up to six months while engaging in the services described in
20 the diversion program.

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

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

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

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

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

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

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

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

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

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

7 (2) Any time a petition is filed seeking a court order
8 authorizing the involuntary medication for purposes of competency
9 restoration pursuant to RCW 10.77.084, the petition must also seek
10 authorization to continue involuntary medication for purposes of
11 maintaining the level of restoration in the jail or juvenile
12 detention facility following the restoration period.

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

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

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

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

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

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

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

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

37 (1) When an individual has a prescription for an antipsychotic,
38 antidepressant, antiepileptic, or other drug prescribed to the
39 individual to treat a serious mental illness by a state hospital or

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

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

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

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

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

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

23 (1) Following a competency evaluation under RCW 10.77.060,
24 individuals who are found not competent to stand trial and not
25 restorable due to an intellectual or developmental disability,
26 dementia, or traumatic brain injury, shall not be referred for
27 competency restoration services.

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

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

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

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

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

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

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

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

35 (3) The department shall offer to transition the individual in
36 services either directly from the jail or as soon thereafter as may
37 be practicable, without maintaining the individual at an inpatient
38 facility for longer than is clinically necessary. Nothing in this
39 subsection prohibits the department from returning the individual to
40 their home or to another less restrictive setting if such setting is

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

8 (4) Subject to the availability of funds appropriated for this
9 specific purpose, the department shall develop a program for
10 individuals who have been involved with the criminal justice system
11 and who have been found under RCW 10.77.084 as incompetent to stand
12 trial due to an intellectual or developmental disability, traumatic
13 brain injury, or dementia and who do not meet criteria under other
14 programs in this section. The program must involve wraparound
15 services and housing supports appropriate to the needs of the
16 individual. It is sufficient to meet the criteria for participation
17 in this program if the individual has recently been the subject of
18 criminal charges and was found incompetent to stand trial due to an
19 intellectual or developmental disability, traumatic brain injury, or
20 dementia.

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

1 intellectual and developmental disabilities. The department of social
2 and health services shall share data as needed to assist in report
3 development.

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

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

13 An outpatient competency restoration program must include access
14 to a prescriber.

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

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

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

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

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

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

12 (1) The department shall coordinate with cities, counties,
13 hospitals, and other public and private entities to identify
14 locations that may be commissioned or renovated for use in treating
15 clients committed to the department for competency evaluation,
16 competency restoration, civil conversion, or treatment following
17 acquittal by reason of insanity.

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

21 **Sec. 20.** RCW 10.77.065 and 2019 c 325 s 5006 are each amended to
22 read as follows:

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

30 (ii) A copy of the report and recommendation shall be provided to
31 the designated crisis responder, the prosecuting attorney, the
32 defense attorney, and the professional person at the local
33 correctional facility where the defendant is being held, or if there
34 is no professional person, to the person designated under (a) (iv) of
35 this subsection. Upon request, the evaluator shall also provide
36 copies of any source documents relevant to the evaluation to the
37 designated crisis responder.

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

14 (iv) If there is no professional person at the local correctional
15 facility, the local correctional facility shall designate a
16 professional person as defined in RCW 71.05.020 or, in cooperation
17 with the behavioral health administrative services organization, a
18 professional person at the behavioral health administrative services
19 organization to receive the report and recommendation.

20 (v) Upon commencement of a defendant's evaluation in the local
21 correctional facility, the local correctional facility must notify
22 the evaluator of the name of the professional person, or person
23 designated under (a)(iv) of this subsection, to receive the report
24 and recommendation.

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

32 (2) The designated crisis responder shall provide written
33 notification within twenty-four hours of the results of the
34 determination whether to commence proceedings under chapter 71.05
35 RCW. The notification shall be provided to the persons identified in
36 subsection (1)(a) of this section.

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

1 (4) A facility conducting a civil commitment evaluation under RCW
2 10.77.086(~~((4))~~) (7) or 10.77.088(~~((1)(e)(ii))~~) (6)(b) that makes a
3 determination to release the person instead of filing a civil
4 commitment petition must provide written notice to the prosecutor and
5 defense attorney at least twenty-four hours prior to release. The
6 notice may be given by email, facsimile, or other means reasonably
7 likely to communicate the information immediately.

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

13 **Sec. 21.** RCW 71.05.235 and 2020 c 302 s 36 are each amended to
14 read as follows:

15 (1) If an individual is referred to a designated crisis responder
16 under RCW 10.77.088(~~((2)(d)(i))~~) (6)(a), the designated crisis
17 responder shall examine the individual within forty-eight hours. If
18 the designated crisis responder determines it is not appropriate to
19 detain the individual or petition for a ninety-day less restrictive
20 alternative under RCW 71.05.230(4), that decision shall be
21 immediately presented to the superior court for hearing. The court
22 shall hold a hearing to consider the decision of the designated
23 crisis responder not later than the next judicial day. At the hearing
24 the superior court shall review the determination of the designated
25 crisis responder and determine whether an order should be entered
26 requiring the person to be evaluated at an evaluation and treatment
27 facility. No person referred to an evaluation and treatment facility
28 may be held at the facility longer than one hundred twenty hours.

29 (2) If an individual is placed in an evaluation and treatment
30 facility under RCW 10.77.088(~~((2)(d)(ii))~~) (6)(b), a professional
31 person shall evaluate the individual for purposes of determining
32 whether to file a ninety-day inpatient or outpatient petition under
33 this chapter. Before expiration of the one hundred twenty hour
34 evaluation period authorized under RCW 10.77.088(~~((2)(d)(ii))~~)
35 (6)(b), the professional person shall file a petition or, if the
36 recommendation of the professional person is to release the
37 individual, present his or her recommendation to the superior court
38 of the county in which the criminal charge was dismissed. The
39 superior court shall review the recommendation not later than forty-

1 eight hours, excluding Saturdays, Sundays, and holidays, after the
2 recommendation is presented. If the court rejects the recommendation
3 to unconditionally release the individual, the court may order the
4 individual detained at a designated evaluation and treatment facility
5 for not more than a one hundred twenty hour evaluation and treatment
6 period. If the evaluation and treatment facility files a ninety-day
7 petition within the one hundred twenty hour period, the clerk shall
8 set a hearing after the day of filing consistent with RCW 71.05.300.
9 Upon the individual's first appearance in court after a petition has
10 been filed, proceedings under RCW 71.05.310 and 71.05.320 shall
11 commence. For an individual subject to this subsection, the
12 professional person may directly file a petition for ninety-day
13 inpatient or outpatient treatment and no petition for initial
14 detention or fourteen-day detention is required before such a
15 petition may be filed.

16 (3) If a designated crisis responder or the professional person
17 and prosecuting attorney for the county in which the criminal charge
18 was dismissed or attorney general, as appropriate, stipulate that the
19 individual does not present a likelihood of serious harm or is not
20 gravely disabled, the hearing under this section is not required and
21 the individual, if in custody, shall be released.

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

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

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

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

38 (3) Such person has been determined to be incompetent and
39 criminal charges have been dismissed pursuant to RCW 10.77.086(~~(+4)~~)

1 (7), and has committed acts constituting a felony, and as a result of
2 a behavioral health disorder, presents a substantial likelihood of
3 repeating similar acts.

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

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

12 (4) Such person is gravely disabled.

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

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

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

24 (A) One physician, physician assistant, or psychiatric advanced
25 registered nurse practitioner; and

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

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

33 (b) The affidavits shall describe in detail the behavior of the
34 detained person which supports the petition and shall explain what,
35 if any, less restrictive treatments which are alternatives to
36 detention are available to such person, and shall state the
37 willingness of the affiant to testify to such facts in subsequent
38 judicial proceedings under this chapter. If less restrictive

1 alternative treatment is sought, the petition shall set forth any
2 recommendations for less restrictive alternative treatment services.

3 (3) If a person has been determined to be incompetent pursuant to
4 RCW 10.77.086(~~((4))~~) (7), then the professional person in charge of
5 the treatment facility or his or her professional designee or the
6 designated crisis responder may directly file a petition for 180-day
7 treatment under RCW 71.05.280(3), or for 90-day treatment under RCW
8 71.05.280 (1), (2), or (4). No petition for initial detention or 14-
9 day detention is required before such a petition may be filed.

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

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

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

37 (3) The court may, if requested, also appoint a professional
38 person as defined in RCW 71.05.020 to seek less restrictive
39 alternative courses of treatment and to testify on behalf of the

1 detained person. In the case of a person with a developmental
2 disability who has been determined to be incompetent pursuant to RCW
3 10.77.086(~~(4)~~) (7), the appointed professional person under this
4 section shall be a developmental disabilities professional.

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

7 (1)(a) Except as provided in subsection (2) of this section, at
8 the earliest possible date, and in no event later than thirty days
9 before conditional release, final release, authorized leave under RCW
10 71.05.325(2), or transfer to a facility other than a state mental
11 hospital, the superintendent shall send written notice of conditional
12 release, release, authorized leave, or transfer of a person committed
13 under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a
14 sex, violent, or felony harassment offense pursuant to RCW
15 10.77.086(~~(4)~~) (7) to the following:

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

18 (ii) The sheriff of the county in which the person will reside;
19 and

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

22 (b) The same notice as required by (a) of this subsection shall
23 be sent to the following, if such notice has been requested in
24 writing about a specific person committed under RCW 71.05.280(3) or
25 71.05.320(4)(c) following dismissal of a sex, violent, or felony
26 harassment offense pursuant to RCW 10.77.086(~~(4)~~) (7):

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

31 (ii) Any witnesses who testified against the person in any court
32 proceedings;

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

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

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

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

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

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

31 (4) The superintendent shall send the notices required by this
32 chapter to the last address provided to the department of social and
33 health services by the requesting party. The requesting party shall
34 furnish the department of social and health services with a current
35 address.

36 (5) For purposes of this section the following terms have the
37 following meanings:

38 (a) "Violent offense" means a violent offense under RCW
39 9.94A.030;

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

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

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

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

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

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

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

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

20 (iv) Release of a person who has been found not guilty by reason
21 of insanity of a sexually violent offense pursuant to RCW
22 10.77.020(3).

23 (b) The agency shall provide the prosecuting agency with all
24 relevant information including but not limited to the following
25 information:

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

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

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

33 (iv) A current record of all prior arrests and convictions, and
34 full police case reports relating to those arrests and convictions;
35 and

36 (v) A current mental health evaluation or mental health records
37 review.

38 (c) The prosecuting agency has the authority, consistent with RCW
39 72.09.345(~~((3))~~) (4), to obtain all records relating to the person if

1 the prosecuting agency deems such records are necessary to fulfill
2 its duties under this chapter. The prosecuting agency may only
3 disclose such records in the course of performing its duties pursuant
4 to this chapter, unless otherwise authorized by law.

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

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

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

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

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

39 (2) The petition may be filed by:

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

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

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

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

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

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

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

31 If, on the date that the petition is filed, the person was living
32 in the community after release from custody, the state must also
33 prove beyond a reasonable doubt that the person had committed a
34 recent overt act. If the state alleges that the prior sexually
35 violent offense that forms the basis for the petition for commitment
36 was an act that was sexually motivated as provided in RCW
37 71.09.020(~~(15)(e)~~) (18)(c), the state must prove beyond a
38 reasonable doubt that the alleged sexually violent act was sexually
39 motivated as defined in RCW 9.94A.030.

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

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

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

23 (2) If the person charged with a sexually violent offense has
24 been found incompetent to stand trial, and is about to be or has been
25 released pursuant to RCW 10.77.086(~~((4))~~) (7), and his or her
26 commitment is sought pursuant to subsection (1) of this section, the
27 court shall first hear evidence and determine whether the person did
28 commit the act or acts charged if the court did not enter a finding
29 prior to dismissal under RCW 10.77.086(~~((4))~~) (7) that the person
30 committed the act or acts charged. The hearing on this issue must
31 comply with all the procedures specified in this section. In
32 addition, the rules of evidence applicable in criminal cases shall
33 apply, and all constitutional rights available to defendants at
34 criminal trials, other than the right not to be tried while
35 incompetent, shall apply. After hearing evidence on this issue, the
36 court shall make specific findings on whether the person did commit
37 the act or acts charged, the extent to which the person's
38 incompetence or developmental disability affected the outcome of the
39 hearing, including its effect on the person's ability to consult with
40 and assist counsel and to testify on his or her own behalf, the

1 extent to which the evidence could be reconstructed without the
2 assistance of the person, and the strength of the prosecution's case.
3 If, after the conclusion of the hearing on this issue, the court
4 finds, beyond a reasonable doubt, that the person did commit the act
5 or acts charged, it shall enter a final order, appealable by the
6 person, on that issue, and may proceed to consider whether the person
7 should be committed pursuant to this section.

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

21 (4) A court has jurisdiction to order a less restrictive
22 alternative placement only after a hearing ordered pursuant to RCW
23 71.09.090 following initial commitment under this section and in
24 accord with the provisions of this chapter.

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

29 NEW SECTION. **Sec. 30.** Section 7 of this act expires when
30 section 8 of this act takes effect.

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

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

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

3 Correct the title.

EFFECT: Provides that when a court determines if there is a genuine doubt as to competency, waiver of attorney-client privilege is not required, and defense counsel may file a declaration stating there is reason to believe a competency evaluation is needed and the basis on which the defendant is believed to be incompetent.

Provides that an evaluator must have 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.

Gives a court discretion on whether to issue a warrant for failure to appear when a defendant fails to appear for an evaluation after two prior unsuccessful scheduling attempts.

Provides that the forensic navigator's duty to provide regular updates to the court and parties also applies to an individual's participation in outpatient services.

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 the 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 that apply to defendants charged with certain class C felonies (any class C felony except Assault 3 where bodily harm occurred, felony Physical Control of a Vehicle or Hit and Run resulting in injury, Hate Crime Offense, class C felony with a domestic violence designation or sexual motivation allegation, or class C felony sex offense). Requires a court to first consider all available and appropriate alternatives to inpatient competency restoration, and to dismiss the charges without prejudice upon agreement of the parties if the forensic navigator has found an appropriate diversion program willing to accept the defendant. Provides that for any defendant charged with certain class C felonies who is admitted for competency restoration with an accompanying court order for involuntary medication and who is found not competent after that restoration period, charges must be dismissed without prejudice and the defendant committed to DSHS for evaluation under the Involuntary Treatment Act (ITA).

For a defendant charged with a nonfelony that is a serious offense, requires the court to first consider all available and appropriate alternatives to inpatient competency restoration, and if the parties agree to an appropriate diversion program, the court must dismiss the charges without prejudice and refer the defendant to the diversion program. Provides that if the parties do not agree on an appropriate diversion program, the court will dismiss the charges without prejudice unless the prosecutor objects and the court finds that there is a compelling state interest in competency restoration.

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

Requires a forensic navigator to be appointed for defendants charged with certain class C felonies (in addition to persons charged with a nonfelony) who have had two or more cases dismissed due to a finding of incompetency in the preceding 24 months and who are at risk for a finding of incompetency on their current charge to determine the person's willingness to engage with diversion. Requires the court to dismiss the charges upon agreement of the parties that the defendant has been accepted into a diversion program recommended by the forensic navigator. For a defendant charged with a nonfelony, the court may order the defendant to a recommended diversion program, and upon engagement with the diversion program, the court may grant a defense motion to dismiss the charges without prejudice if the court finds the defendant is amenable to services and can safely receive services in the community. For defendants charged with certain class C felonies, the court may grant a motion for dismissal of the charges without prejudice if the defendant is subject to a civil commitment order and the court confirms that there is an available treatment plan.

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

Creates additional requirements relating to persons found incompetent due to an intellectual or developmental disability, dementia, or a traumatic brain injury, including requiring DSHS to develop a process for connecting the individuals to available wraparound services and community-based supports. Specifies requirements for those who are current clients of DSHS, and for those who are not current clients, including connecting the person with the forensic navigator to determine if the person is eligible for diversion, supportive housing, or case management programs as a *Trueblood* class member.

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

Provides that when a petition is filed for a court order authorizing involuntary medication for purposes of competency restoration, the petition must 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 facility does not otherwise have available and must continue prescribing to a person who is medically stable on the drug.

Provides that clinical intervention specialists are subject to the security and background investigation requirements of jails, and requires DSHS to establish a memorandum of understanding and any needed contracts to address terms and conditions of allowing access to defendants and their records.

Makes technical changes to correct cross-references, and provides that the act is null and void unless specific funding for the act is provided in the omnibus appropriations act.

--- END ---