
SUBSTITUTE SENATE BILL 5440

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Dhingra, Nguyen, Saldaña, Valdez, Van De Wege, and C. Wilson; by request of Office of the Governor)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to providing timely competency evaluations and
2 restoration services to persons suffering from behavioral health
3 disorders within the framework of the forensic mental health care
4 system consistent with the requirements agreed to in the Trueblood
5 settlement agreement; amending RCW 10.77.060, 10.77.068, 10.77.074,
6 10.77.084, 10.77.086, 10.77.088, and 10.77.092; reenacting and
7 amending RCW 10.77.010; adding new sections to chapter 10.77 RCW; and
8 creating a new section.

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

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

12 As used in this chapter:

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

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

16 (3) "Clinical intervention specialist" means a licensed
17 professional with prescribing authority who is employed by or
18 contracted with the department to provide enhanced oversight and
19 monitoring of the behavioral health status of in-custody individuals
20 who have been referred for services related to competency to stand

1 trial and to play a coordination role with forensic navigators, the
2 department, and jail health services.

3 (4) "Clinical intervention unit" means a discrete unit in a jail
4 or other facility designated to house pretrial defendants with
5 behavioral health disorders who have been referred for services
6 related to competency to stand trial under voluntary contract with
7 the department to provide enhanced behavioral health services to
8 these defendants.

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

12 ~~((4))~~ (6) "Community behavioral health agency" has the same
13 meaning as "licensed or certified behavioral health agency" defined
14 in RCW 71.24.025.

15 ~~((5))~~ (7) "Conditional release" means modification of a court-
16 ordered commitment, which may be revoked upon violation of any of its
17 terms.

18 ~~((6))~~ (8) A "criminally insane" person means any person who has
19 been acquitted of a crime charged by reason of insanity, and
20 thereupon found to be a substantial danger to other persons or to
21 present a substantial likelihood of committing criminal acts
22 jeopardizing public safety or security unless kept under further
23 control by the court or other persons or institutions.

24 ~~((7))~~ (9) "Department" means the state department of social and
25 health services.

26 ~~((8))~~ (10) "Designated crisis responder" has the same meaning
27 as provided in RCW 71.05.020.

28 ~~((9))~~ (11) "Detention" or "detain" means the lawful confinement
29 of a person, under the provisions of this chapter, pending
30 evaluation.

31 ~~((10))~~ (12) "Developmental disabilities professional" means a
32 person who has specialized training and ~~((three years of))~~ experience
33 in directly treating or working with persons with developmental
34 disabilities and is a psychiatrist or psychologist, or a social
35 worker, and such other developmental disabilities professionals as
36 may be defined by rules adopted by the secretary.

37 ~~((11))~~ (13) "Developmental disability" means the condition as
38 defined in RCW 71A.10.020~~((5))~~.

1 (~~(12)~~) (14) "Discharge" means the termination of hospital
2 medical authority. The commitment may remain in place, be terminated,
3 or be amended by court order.

4 (~~(13)~~) (15) "Furlough" means an authorized leave of absence for
5 a resident of a state institution operated by the department
6 designated for the custody, care, and treatment of the criminally
7 insane, consistent with an order of conditional release from the
8 court under this chapter, without any requirement that the resident
9 be accompanied by, or be in the custody of, any law enforcement or
10 institutional staff, while on such unescorted leave.

11 (~~(14)~~) (16) "Genuine doubt as to competency" means that there
12 is reasonable cause to believe, based upon actual interactions with
13 or observations of the defendant, that a defendant is incompetent to
14 stand trial.

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

23 (~~(15)~~) (18) "History of one or more violent acts" means violent
24 acts committed during: (a) The ten-year period of time prior to the
25 filing of criminal charges; plus (b) the amount of time equal to time
26 spent during the ten-year period in a mental health facility or in
27 confinement as a result of a criminal conviction.

28 (~~(16)~~) (19) "Immediate family member" means a spouse, child,
29 stepchild, parent, stepparent, grandparent, sibling, or domestic
30 partner.

31 (~~(17)~~) (20) "Incompetency" means a person lacks the capacity to
32 understand the nature of the proceedings against him or her or to
33 assist in his or her own defense as a result of mental disease or
34 defect.

35 (~~(18)~~) (21) "Indigent" means any person who is financially
36 unable to obtain counsel or other necessary expert or professional
37 services without causing substantial hardship to the person or his or
38 her family.

39 (~~(19)~~) (22) "Individualized service plan" means a plan prepared
40 by a developmental disabilities professional with other professionals

1 as a team, for an individual with developmental disabilities, which
2 shall state:

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

5 (b) The conditions and strategies necessary to achieve the
6 purposes of habilitation;

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

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

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

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

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

18 (~~(20)~~) (23) "Professional person" means:

19 (a) A psychiatrist licensed as a physician and surgeon in this
20 state who has, in addition, completed three years of graduate
21 training in psychiatry in a program approved by the American medical
22 association or the American osteopathic association and is certified
23 or eligible to be certified by the American board of psychiatry and
24 neurology or the American osteopathic board of neurology and
25 psychiatry;

26 (b) A psychologist licensed as a psychologist pursuant to chapter
27 18.83 RCW;

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

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

33 (~~(21)~~) (24) "Release" means legal termination of the court-
34 ordered commitment under the provisions of this chapter.

35 (~~(22)~~) (25) "Secretary" means the secretary of the department
36 of social and health services or his or her designee.

37 (~~(23)~~) (26) "Treatment" means any currently standardized
38 medical or mental health procedure including medication.

39 (~~(24)~~) (27) "Treatment records" include registration and all
40 other records concerning persons who are receiving or who at any time

1 have received services for mental illness, which are maintained by
2 the department, by behavioral health administrative services
3 organizations and their staffs, by managed care organizations and
4 their staffs, and by treatment facilities. Treatment records do not
5 include notes or records maintained for personal use by a person
6 providing treatment services for the department, behavioral health
7 administrative services organizations, managed care organizations, or
8 a treatment facility if the notes or records are not available to
9 others.

10 ~~((25))~~ (28) "Violent act" means behavior that: (a)(i) Resulted
11 in; (ii) if completed as intended would have resulted in; or (iii)
12 was threatened to be carried out by a person who had the intent and
13 opportunity to carry out the threat and would have resulted in,
14 homicide, nonfatal injuries, or substantial damage to property; or
15 (b) recklessly creates an immediate risk of serious physical injury
16 to another person. As used in this subsection, "nonfatal injuries"
17 means physical pain or injury, illness, or an impairment of physical
18 condition. "Nonfatal injuries" shall be construed to be consistent
19 with the definition of "bodily injury," as defined in RCW 9A.04.110.

20 **Sec. 2.** RCW 10.77.060 and 2022 c 288 s 2 are each amended to
21 read as follows:

22 (1)(a) Whenever a defendant has pleaded not guilty by reason of
23 insanity, ~~((or there is reason to doubt his or her competency,))~~ the
24 court on its own motion or on the motion of any party shall either
25 appoint or request the secretary to designate a qualified expert or
26 professional person, who shall be approved by the prosecuting
27 attorney, to evaluate and report upon the mental condition of the
28 defendant.

29 (b) Whenever there is a doubt as to competency, the court on its
30 own motion or on the motion of any party shall first review the
31 allegations of incompetency. The court shall make a determination of
32 whether a genuine doubt as to competency exists based upon judicial
33 colloquy or direct observation. If a genuine doubt as to competency
34 exists, the court shall either appoint or request the secretary to
35 designate a qualified expert or professional person, who shall be
36 approved by the prosecuting attorney, to evaluate and report upon the
37 mental condition of the defendant.

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, educational, or correctional facility that relate to
2 the present or past mental, emotional, or physical condition of the
3 defendant. If the court is advised by any party that the defendant
4 may have a developmental disability, the evaluation must be performed
5 by a developmental disabilities professional and the evaluator shall
6 have access to records of the developmental disabilities
7 administration of the department.

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

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

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

37 ~~((f))~~ (g) When a defendant is ordered to be evaluated under
38 this subsection (1), or when a party or the court determines at first
39 appearance that an order for evaluation under this subsection will be
40 requested or ordered if charges are pursued, the court may delay

1 granting bail until the defendant has been evaluated for competency
2 or sanity and appears before the court. Following the evaluation, in
3 determining bail the court shall consider: (i) Recommendations of the
4 evaluator regarding the defendant's competency, sanity, or diminished
5 capacity; (ii) whether the defendant has a recent history of one or
6 more violent acts; (iii) whether the defendant has previously been
7 acquitted by reason of insanity or found incompetent; (iv) whether it
8 is reasonably likely the defendant will fail to appear for a future
9 court hearing; and (v) whether the defendant is a threat to public
10 safety.

11 (h) If the defendant ordered to be evaluated under this
12 subsection (1) is charged with a serious traffic offense under RCW
13 9.94A.030, or a felony version of a serious traffic offense, the
14 prosecutor may make a motion to modify the defendant's conditions of
15 release to include a condition prohibiting the defendant from driving
16 during the pendency of the competency evaluation period.

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

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

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

29 (b) A diagnosis or description of the current mental status of
30 the defendant;

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

33 (d) If the defendant has indicated his or her intention to rely
34 on the defense of insanity pursuant to RCW 10.77.030, and an
35 evaluation and report by an expert or professional person has been
36 provided concluding that the defendant was criminally insane at the
37 time of the alleged offense, an opinion as to the defendant's sanity
38 at the time of the act, and an opinion as to whether the defendant
39 presents a substantial danger to other persons, or presents a
40 substantial likelihood of committing criminal acts jeopardizing

1 public safety or security, unless kept under further control by the
2 court or other persons or institutions, provided that no opinion
3 shall be rendered under this subsection (3)(d) unless the evaluator
4 or court determines that the defendant is competent to stand trial;

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

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

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

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

26 (6) If a finding of the competency evaluation under this section
27 or under RCW 10.77.084 is that the individual is not competent due to
28 an intellectual or developmental disability, the evaluator shall
29 notify the department, which shall refer the individual to the
30 developmental disabilities administration of the department for
31 review of eligibility for services. Information about availability of
32 services must be provided to the evaluator and the forensic
33 navigator, if any.

34 **Sec. 3.** RCW 10.77.068 and 2022 c 288 s 3 are each amended to
35 read as follows:

36 (1)(a) The legislature establishes a performance target of seven
37 days or fewer to extend an offer of admission to a defendant in
38 pretrial custody for inpatient competency evaluation or inpatient

1 competency restoration services, when access to the services is
2 legally authorized.

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

6 (i) To complete a competency evaluation in jail and distribute
7 the evaluation report; and

8 (ii) To extend an offer of admission to a defendant ordered to be
9 committed to (~~a state hospital~~) the custody of the department
10 following dismissal of charges based on incompetency to stand trial
11 under RCW 10.77.086.

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

15 (2)(a) A maximum time limit of seven days as measured from the
16 department's receipt of the court order, or a maximum time limit of
17 14 days as measured from signature of the court order, whichever is
18 shorter, is established to complete the services specified in
19 subsection (1)(a) of this section, subject to the limitations under
20 subsection (9) of this section.

21 (b) A maximum time limit of 14 days as measured from the
22 department's receipt of the court order, or a maximum time limit of
23 21 days as measured from signature of the court order, whichever is
24 shorter, is established to complete the services specified in
25 subsection (1)(b) of this section, subject to the limitations under
26 subsection (9) of this section.

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

32 (4) It shall be a defense to an allegation that the department
33 has exceeded the maximum time limits for completion of competency
34 services described in subsection (2) of this section if the
35 department can demonstrate by a preponderance of the evidence that
36 the reason for exceeding the maximum time limits was outside of the
37 department's control including, but not limited to, the following
38 circumstances:

1 (a) Despite a timely request, the department has not received
2 necessary medical information regarding the current medical status of
3 a defendant;

4 (b) The individual circumstances of the defendant make accurate
5 completion of an evaluation of competency to stand trial dependent
6 upon review of mental health, substance use disorder, or medical
7 history information which is in the custody of a third party and
8 cannot be immediately obtained by the department, provided that
9 completion shall not be postponed for procurement of information
10 which is merely supplementary;

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

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

16 (e) Completion of the referral requires additional time to
17 accommodate the availability or participation of counsel, court
18 personnel, interpreters, or the defendant;

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

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

25 (5) The department shall provide written notice to the court when
26 it will not be able to meet the maximum time limits under subsection
27 (2) of this section and identify the reasons for the delay and
28 provide a reasonable estimate of the time necessary to complete the
29 competency service. Good cause for an extension for the additional
30 time estimated by the department shall be presumed absent a written
31 response from the court or a party received by the department within
32 seven days.

33 (6) The department shall:

34 (a) Develop, document, and implement procedures to monitor the
35 clinical status of defendants admitted to a state hospital for
36 competency services that allow the state hospital to accomplish early
37 discharge for defendants for whom clinical objectives have been
38 achieved or may be achieved before expiration of the commitment
39 period;

1 (b) Investigate the extent to which patients admitted to a state
2 hospital under this chapter overstay time periods authorized by law
3 and take reasonable steps to limit the time of commitment to
4 authorized periods; and

5 (c) Establish written standards for the productivity of forensic
6 evaluators and utilize these standards to internally review the
7 performance of forensic evaluators.

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

15 (8) The department shall report annually to the legislature and
16 the executive on the timeliness of services related to competency to
17 stand trial and the timeliness with which court referrals accompanied
18 by charging documents, discovery, and criminal history information
19 are provided to the department relative to the signature date of the
20 court order. The report must be in a form that is accessible to the
21 public and that breaks down performance by county.

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

26 **Sec. 4.** RCW 10.77.074 and 2019 c 326 s 2 are each amended to
27 read as follows:

28 (1) Subject to the limitations described in subsection (2) of
29 this section, a court may appoint an impartial forensic navigator
30 employed by or contracted by the department to assist individuals who
31 have been referred for competency evaluation and shall appoint a
32 forensic navigator in circumstances described under section 8 of this
33 act.

34 (2) A forensic navigator must assist the individual to access
35 services related to diversion and community outpatient competency
36 restoration. The forensic navigator must assist the individual,
37 prosecuting attorney, defense attorney, and the court to understand
38 the options available to the individual and be accountable as an

1 officer of the court for faithful execution of the responsibilities
2 outlined in this section.

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

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

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

10 (c) To assess the individual for appropriateness for assisted
11 outpatient treatment under chapter 71.05 RCW if the individual is out
12 of custody or is released from custody as part of a diversion;

13 (d) To present information to the court in order to assist the
14 court in understanding the treatment options available to the
15 individual to support the entry of orders for diversion from the
16 forensic mental health system or for community outpatient competency
17 restoration, ~~((and))~~ to facilitate that transition, and to provide
18 updates to the court and parties of the status of the individual's
19 participation in diversion services; ~~((and~~

20 ~~(d))~~ (e) When the individual is ordered to receive community
21 outpatient restoration, to provide services to the individual
22 including:

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

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

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

27 (iv) Providing information to the court concerning the
28 individual's progress and compliance with court-ordered conditions of
29 release, which may include appearing at court hearings to provide
30 information to the court;

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

33 (vi) Assisting the individual with obtaining prescribed
34 medication and encouraging adherence with prescribed medication;

35 (vii) Assessing the individual for appropriateness for assisted
36 outpatient treatment under chapter 71.05 RCW and coordinating the
37 initiation of an assisted outpatient treatment order if appropriate
38 as part of a diversion program plan;

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

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

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

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

10 (f) If the individual is an American Indian or Alaska Native who
11 receives medical, behavioral health, housing, or other supportive
12 services from a tribe within this state, to notify and coordinate
13 with the tribe and Indian health care provider. Notification shall be
14 made in person or by telephonic or electronic communication to the
15 tribal contact listed in the authority's tribal crisis coordination
16 plan as soon as possible.

17 (4) Forensic navigators may submit nonclinical recommendations to
18 the court regarding treatment and restoration options for the
19 individual, which the court may consider and weigh in conjunction
20 with the recommendations of all of the parties.

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

23 (6) The signed order for competency evaluation from the court
24 shall serve as authority for the forensic navigator to be given
25 access to all records held by a behavioral health, educational, or
26 law enforcement agency or a correctional facility that relates to an
27 individual. Information that is protected by state or federal law,
28 including health information, shall not be entered into the court
29 record without the consent of the individual or their defense
30 attorney.

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

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

38 **Sec. 5.** RCW 10.77.084 and 2016 sp.s. c 29 s 410 are each amended
39 to read as follows:

1 (1) (a) If at any time during the pendency of an action and prior
2 to judgment the court finds, following a report as provided in RCW
3 10.77.060, a defendant is incompetent, the court shall order the
4 proceedings against the defendant be stayed except as provided in
5 subsection (4) of this section. If the defendant is charged with a
6 serious traffic offense under RCW 9.94A.030, or a felony version of a
7 serious traffic offense, the court may order the clerk to transmit an
8 order to the department of licensing for revocation of the
9 defendant's driver's license for a period of one year.

10 (b) The court may order a defendant who has been found to be
11 incompetent to undergo competency restoration treatment at a facility
12 designated by the department if the defendant is eligible under RCW
13 10.77.086 or 10.77.088. At the end of each competency restoration
14 period or at any time a professional person determines competency has
15 been, or is unlikely to be, restored, the defendant shall be returned
16 to court for a hearing, except that if the opinion of the
17 professional person is that the defendant remains incompetent and the
18 hearing is held before the expiration of the current competency
19 restoration period, the parties may agree to waive the defendant's
20 presence, to remote participation by the defendant at a hearing, or
21 to presentation of an agreed order in lieu of a hearing. The facility
22 shall promptly notify the court and all parties of the date on which
23 the competency restoration period commences and expires so that a
24 timely hearing date may be scheduled.

25 (c) For a defendant in custody, the court's order shall indicate
26 whether the court's commitment order includes the authority for the
27 department to modify the defendant's conditions of release by
28 transferring the defendant to a step-down or outpatient competency
29 restoration facility if the department determines that such placement
30 is clinically appropriate.

31 (d) If, following notice and hearing or entry of an agreed order
32 under (b) of this subsection, the court finds that competency has
33 been restored, the court shall lift the stay entered under (a) of
34 this subsection. If the court finds that competency has not been
35 restored, the court shall dismiss the proceedings without prejudice,
36 except that the court may order a further period of competency
37 restoration treatment if it finds that further treatment within the
38 time limits established by RCW 10.77.086 or 10.77.088 is likely to
39 restore competency, and a further period of treatment is allowed
40 under RCW 10.77.086 or 10.77.088.

1 ~~((d))~~ (e) If at any time during the proceeding the court finds,
2 following notice and hearing, a defendant is not likely to regain
3 competency, the court shall dismiss the proceedings without prejudice
4 and refer the defendant for civil commitment evaluation or
5 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
6 10.77.088.

7 (f) If the court issues an order directing revocation of the
8 defendant's driver's license under (a) of this subsection, and the
9 court subsequently finds that the defendant's competency has been
10 restored, the court shall order the clerk to transmit an order to the
11 department of licensing for reinstatement of the defendant's driver's
12 license. The court may direct the clerk to transmit an order
13 reinstating the defendant's driver's license before the end of one
14 year for good cause upon the petition of the defendant.

15 (2) If the defendant is referred for evaluation by a designated
16 crisis responder under this chapter, the designated crisis responder
17 shall provide prompt written notification of the results of the
18 evaluation and whether the person was detained. The notification
19 shall be provided to the court in which the criminal action was
20 pending, the prosecutor, the defense attorney in the criminal action,
21 and the facility that evaluated the defendant for competency.

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

25 (4) A defendant receiving medication for either physical or
26 mental problems shall not be prohibited from standing trial, if the
27 medication either enables the defendant to understand the proceedings
28 against him or her and to assist in his or her own defense, or does
29 not disable him or her from so understanding and assisting in his or
30 her own defense.

31 (5) At or before the conclusion of any commitment period provided
32 for by this section, the facility providing evaluation and treatment
33 shall provide to the court a written report of evaluation which meets
34 the requirements of RCW 10.77.060(3). For defendants charged with a
35 felony, the report following the second competency restoration period
36 or first competency restoration period if the defendant's
37 incompetence is determined to be solely due to a developmental
38 disability or the evaluator concludes that the defendant is not
39 likely to regain competency must include an assessment of the

1 defendant's future dangerousness which is evidence-based regarding
2 predictive validity.

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

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

14 (a) To be eligible for an order for outpatient competency
15 restoration, a defendant must be clinically appropriate and be
16 willing to:

17 (i) Adhere to medications or receive prescribed intramuscular
18 medication;

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

20 (iii) Comply with urinalysis or breathalyzer monitoring if
21 needed.

22 (b) If the court orders inpatient competency restoration, the
23 department shall place the defendant in an appropriate facility of
24 the department for competency restoration.

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

38 (d) If a defendant fails to comply with the restrictions of the
39 outpatient restoration program such that restoration is no longer

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

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

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

1 (e) The court may not issue an order for outpatient competency
2 restoration unless the ((department)) authority certifies that there
3 is an available appropriate outpatient competency restoration program
4 that has adequate space for the person at the time the order is
5 issued or the court places the defendant under the guidance and
6 control of a professional person identified in the court order.

7 (2) For a defendant whose highest charge is a class C felony, or
8 a class B felony that is not classified as violent under RCW
9 9.94A.030, the maximum time allowed for the initial competency
10 restoration period is 45 days if the defendant is referred for
11 inpatient competency restoration, or 90 days if the defendant is
12 referred for outpatient competency restoration, provided that if the
13 outpatient competency restoration placement is terminated and the
14 defendant is subsequently admitted to an inpatient facility, the
15 period of inpatient treatment during the first competency restoration
16 period under this subsection shall not exceed 45 days.

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

25 (4) On or before expiration of the initial competency restoration
26 period the court shall conduct a hearing to determine whether the
27 defendant is now competent to stand trial. If the court finds by a
28 preponderance of the evidence that the defendant is incompetent to
29 stand trial, the court may order an extension of the competency
30 restoration period for an additional period of 90 days, but the court
31 must at the same time set a date for a new hearing to determine the
32 defendant's competency to stand trial before the expiration of this
33 second restoration period. The defendant, the defendant's attorney,
34 and the prosecutor have the right to demand that the hearing be
35 before a jury. No extension shall be ordered for a second or third
36 competency restoration period if the defendant's incompetence has
37 been determined by the secretary to be solely the result of a
38 developmental disability which is such that competence is not
39 reasonably likely to be regained during an extension.

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

23 (6) Any period of competency restoration treatment under this
24 section includes only the time the defendant is actually at the
25 facility or is actively participating in an outpatient competency
26 restoration program and is in addition to reasonable time for
27 transport to or from the facility.

28 **Sec. 7.** RCW 10.77.088 and 2022 c 288 s 5 are each amended to
29 read as follows:

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

33 (a) Shall dismiss the proceedings without prejudice and detain
34 the defendant (~~for sufficient time to allow the designated crisis~~
35 ~~responder to evaluate the defendant and consider initial detention~~
36 ~~proceedings under chapter 71.05 RCW~~) pursuant to subsection (5) of
37 this section, unless the prosecutor objects to the dismissal and
38 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 prosecuting attorney proves by a preponderance of the evidence
11 that there is a compelling state interest in ordering competency
12 restoration treatment, then the court shall issue an order in
13 accordance with subsection (2) of this section. If the defendant is
14 charged with a serious traffic offense under RCW 9.94A.030, the court
15 may order the clerk to transmit an order to the department of
16 licensing for revocation of the defendant's driver's license for a
17 period of one year. The court shall direct the clerk to transmit an
18 order to the department of licensing reinstating the defendant's
19 driver's license if the defendant is subsequently restored to
20 competency, and may do so at any time before the end of one year for
21 good cause upon the petition of the defendant.

22 (2) (a) If a court finds pursuant to subsection (1)(b) of this
23 section that there is a compelling state interest in pursuing
24 competency restoration treatment, the court shall ~~((commit the~~
25 ~~defendant to the custody of the secretary for inpatient competency~~
26 ~~restoration, or may alternatively))~~ order the defendant to receive
27 outpatient competency restoration ~~((based on a recommendation from a~~
28 ~~forensic navigator and input from the parties))~~ if an outpatient
29 competency restoration program is available in the jurisdiction and
30 is recommended as clinically appropriate by the forensic navigator,
31 consistent with the recommendation of the forensic navigator, unless
32 the court finds that an order for outpatient competency restoration
33 is clearly inappropriate considering the health and safety of the
34 defendant, risks to public safety, and other relevant factors.

35 ~~((a))~~ (b) To be eligible for an order for outpatient competency
36 restoration, a defendant must be ~~((clinically appropriate and be))~~
37 willing to:

38 (i) Adhere to medications or receive prescribed intramuscular
39 medication;

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

1 (iii) Comply with urinalysis or breathalyzer monitoring if
2 needed.

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

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

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

1 notice of intent to terminate the outpatient competency restoration
2 placement.

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

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

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

28 (g) If the court does not order the defendant to receive
29 outpatient competency restoration under (a) of this subsection, the
30 court shall commit the defendant to the custody of the department for
31 inpatient competency restoration.

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

38 (4) If the court has determined or the parties agree that the
39 defendant is unlikely to regain competency, the court may dismiss the
40 charges without prejudice without ordering the defendant to undergo

1 competency restoration treatment, in which case the court shall order
2 that the defendant be referred for evaluation for civil commitment in
3 the manner provided in subsection (5) of this section.

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

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

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

30 (7) If at any time the court dismisses charges under subsections
31 (1) through (6) of this section, the court shall make a finding as to
32 whether the defendant has a history of one or more violent acts. If
33 the court so finds, the defendant is barred from the possession of
34 firearms until a court restores his or her right to possess a firearm
35 under RCW 9.41.047. The court shall state to the defendant and
36 provide written notice that the defendant is barred from the
37 possession of firearms and that the prohibition remains in effect
38 until a court restores his or her right to possess a firearm under
39 RCW 9.41.047.

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

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

8 (1) The court shall appoint a forensic navigator for every
9 defendant referred for competency evaluation whose most serious
10 charge is a nonfelony if:

11 (a) The defendant has had two or more competency evaluations in
12 the preceding 24 months on separate charges or cause numbers; and

13 (b) The defendant's current charges are filed in a county that
14 has a forensic navigator program.

15 (2) In each case in which a forensic navigator is appointed under
16 subsection (1) of this section, the forensic navigator shall:

17 (a) Meet, interview, and observe the defendant and determine the
18 defendant's willingness to engage with services under this section;
19 and

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

24 (3) If the parties agree on the diversion program recommended by
25 the forensic navigator, the prosecutor shall request dismissal of the
26 criminal charges.

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

35 (5) Individuals who receive a dismissal of charges and referral
36 to services described in a diversion program shall have a forensic
37 navigator assigned to assist them for up to six months while engaging
38 in the services described in the diversion program. The forensic

1 navigator shall provide monthly status updates to the court and the
2 parties regarding the individual's status in the diversion program.

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

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

11 (a) Any violent offense, sex offense, serious traffic offense,
12 and most serious offense, as those terms are defined in RCW
13 9.94A.030;

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

16 (c) Any offense contained in chapter 9.41 RCW (firearms and
17 dangerous weapons);

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

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

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

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

25 (2) (a) In a particular case, a court may determine that a pending
26 charge not otherwise defined as serious by state or federal law or by
27 a city or county ordinance is, nevertheless, a serious offense within
28 the context of competency restoration treatment when the conduct in
29 the charged offense falls within the standards established in (b) of
30 this subsection.

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

35 (i) The charge includes an allegation that the defendant actually
36 inflicted bodily or emotional harm on another person or that the
37 defendant created a reasonable apprehension of bodily or emotional
38 harm to another;

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

3 (iii) The number and nature of related charges pending against
4 the defendant;

5 (iv) The length of potential confinement if the defendant is
6 convicted; and

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

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

11 (1) When an individual has a prescription for an antipsychotic,
12 antidepressant, antiepileptic, or other drug prescribed to the
13 individual to treat a serious mental illness by a state hospital or
14 other state facility or a behavioral health agency or other certified
15 medical provider, and the individual is medically stable on the drug,
16 a jail or juvenile detention facility shall continue prescribing the
17 prescribed drug and may not require the substitution of a different
18 drug in a given therapeutic class, except under the following
19 circumstances:

20 (a) The substitution is for a generic version of a name brand
21 drug and the generic version is chemically identical to the name
22 brand drug; or

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

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

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

32 (1) The department shall develop a program for individuals who
33 have been involved with the criminal justice system and who are
34 diagnosed with a developmental disability or dementia disorder. The
35 program must involve wraparound services and housing supports
36 appropriate to the needs of the individual. It is sufficient to meet
37 the criteria for participation in this program if the individual has
38 recently been the subject of criminal charges that were dismissed

1 without prejudice and was evaluated as incompetent to stand trial due
2 to a developmental disability or dementia disorder.

3 (2) In the event that a court orders the commitment of an
4 individual to the custody of the department under RCW 10.77.086(5)
5 who was found incompetent to stand trial due to a developmental
6 disability or dementia disorder, the department shall place the
7 individual in the program either directly from the jail or as soon
8 thereafter as may be practicable, without maintaining the individual
9 at an inpatient facility for longer than is clinically necessary.
10 Nothing in this subsection prohibits the department from returning
11 the individual to their home or to another less restrictive setting
12 if such placement is appropriate, which may include provision of
13 supportive services to help the person maintain stability.

14 NEW SECTION. **Sec. 12.** Subject to the availability of funds
15 appropriated for this specific purpose, the health care authority
16 shall increase compensation for staff in outpatient competency
17 restoration programs to ensure compensation is provided at
18 competitive levels to improve recruitment and allow for the full
19 implementation of outpatient competency restoration programs.

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

22 The staff of an outpatient competency restoration program must
23 include a prescriber.

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

26 (1) The department may contract with willing jails to fund
27 construction and operational costs for clinical intervention units to
28 provide enhanced oversight, monitoring, and support to in-custody
29 individuals within the jails who have been referred for services
30 related to competency to stand trial.

31 (2) Jails which contract with the department to provide clinical
32 intervention units shall allow access to individuals who are
33 participating in the program by clinical intervention specialists
34 employed by or contracted with the department. Clinical intervention
35 specialists shall support jail health services in providing enhanced
36 oversight and monitoring of the behavioral health status of
37 participating individuals. Clinical intervention specialists shall

1 work collaboratively with jail health services to ensure appropriate
2 prescriptions, medication compliance monitoring, and access to
3 supportive behavioral health services to the individuals. Clinical
4 intervention specialists shall interface regularly with forensic
5 navigators and the department to assist forensic navigators in making
6 recommendations for appropriate placements, which may include
7 recommendations for participation in an outpatient competency
8 restoration program or a diversion program designed for the needs of
9 the individual. The clinical intervention specialist shall notify the
10 department if a participating individual appears to have stabilized
11 in their behavioral health such that a new competency evaluation is
12 appropriate to reassess the individual's need for competency
13 restoration treatment.

14 (3) To participate in a clinical intervention unit, an
15 incarcerated individual must agree to take prescribed psychotropic
16 medication and to engage with a clinical intervention specialist.

17 (4) The department may establish other requirements for clinical
18 intervention units by contract or rule.

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

21 The department shall configure its data systems related to
22 forensic mental health services such that the systems can retrieve
23 data about unique individual defendants reflecting the full history
24 of criminal charges and forensic referrals relating to that
25 individual rather than tracking referrals in such a way that cannot
26 be tied to individual defendants.

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

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

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

--- **END** ---