
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5440

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/24/23.

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;
8 creating new sections; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that defendants
11 referred for services related to competency to stand trial requiring
12 admission into a psychiatric facility are currently facing
13 unprecedented wait times in jail for admission. The situation has
14 been exacerbated by closure of forensic beds and workforce shortages
15 related to COVID-19, and treatment capacity limits related to social
16 distancing requirements. Moreover, a backlog of criminal prosecutions
17 that were held back during the first two years of the pandemic due to
18 capacity limitations in courts, prosecuting attorneys offices, and
19 jails, are now being filed, causing a surge in demand for competency
20 services which exceeds the state's capacity to make a timely
21 response. In partial consequence, as of January 2023, wait times for

1 admission to western state hospital for competency services, directed
2 to be completed within seven days by order of the United States
3 district court for western Washington, have risen to over ten months,
4 while wait times for admission to eastern state hospital for the same
5 services have risen to over five months. The state's forensic bed
6 capacity forecast model indicates that if the state continues to
7 receive competency referrals from local superior, district, and
8 municipal courts at the same volume, the state will rapidly fall
9 farther behind.

10 The legislature further finds that historical investments and
11 policy changes have been made in behavioral health services over the
12 past five years, designed to both increase capacity to provide
13 competency to stand trial services and to reduce the need for them by
14 creating opportunities for diversion, prevention, and improved
15 community health. New construction at western state hospital is
16 expected to result in the opening of 58 forensic psychiatric beds in
17 the first quarter of 2023, while emergency community hospital
18 contracts are expected to allow for the discharge or transfer of over
19 50 civil conversion patients occupying forensic state hospital beds
20 over the same period. Sixteen beds for civil conversion patients will
21 open at Maple Lane school in the first quarter of 2023, with 30
22 additional beds for patients acquitted by reason of insanity expected
23 to open by late 2023 or early 2024. Over a longer time period, 350
24 forensic beds are planned to open within a new forensic hospital on
25 western state hospital campus between 2027 and 2029. Policy and
26 budget changes have increased capacity for assisted outpatient
27 treatment, 988 crisis response, use of medication for opioid use
28 disorders in jails and community settings, reentry services, and
29 mental health advance directives, and created new behavioral health
30 facility types, supportive housing, and supportive employment
31 services. Forensic navigator services, outpatient competency
32 restoration programs, and other specialty forensic services are now
33 available and continuing to be deployed in phase two *Trueblood*
34 settlement regions.

35 The legislature further finds that despite these investments
36 there is a need for everyone to come together to find solutions to
37 both reduce demand for forensic services and to increase their
38 supply. The state needs collaboration from local governments and
39 other entities to identify any and all facilities that can be used to
40 provide services to patients connected to the forensic system, to

1 reduce the flow of competency referrals coming from municipal,
2 district, and superior courts, and to improve availability and
3 effectiveness of behavioral health services provided outside the
4 criminal justice system.

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

7 As used in this chapter:

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

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

11 (3) "Clinical intervention specialist" means a licensed
12 professional with prescribing authority who is employed by or
13 contracted with the department to provide direct services, enhanced
14 oversight and monitoring of the behavioral health status of in-
15 custody defendants who have been referred for evaluation or
16 restoration services related to competency to stand trial and who
17 coordinate treatment options with forensic navigators, the
18 department, and jail health services.

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

22 ~~((4))~~ (5) "Community behavioral health agency" has the same
23 meaning as "licensed or certified behavioral health agency" defined
24 in RCW 71.24.025.

25 ~~((5))~~ (6) "Conditional release" means modification of a court-
26 ordered commitment, which may be revoked upon violation of any of its
27 terms.

28 ~~((6))~~ (7) A "criminally insane" person means any person who has
29 been acquitted of a crime charged by reason of insanity, and
30 thereupon found to be a substantial danger to other persons or to
31 present a substantial likelihood of committing criminal acts
32 jeopardizing public safety or security unless kept under further
33 control by the court or other persons or institutions.

34 ~~((7))~~ (8) "Department" means the state department of social and
35 health services.

36 ~~((8))~~ (9) "Designated crisis responder" has the same meaning as
37 provided in RCW 71.05.020.

1 (~~(9)~~) (10) "Detention" or "detain" means the lawful confinement
2 of a person, under the provisions of this chapter, pending
3 evaluation.

4 (~~(10)~~) (11) "Developmental disabilities professional" means a
5 person who has specialized training and (~~three years of~~) experience
6 in directly treating or working with persons with developmental
7 disabilities and is a psychiatrist or psychologist, or a social
8 worker, and such other developmental disabilities professionals as
9 may be defined by rules adopted by the secretary.

10 (~~(11)~~) (12) "Developmental disability" means the condition as
11 defined in RCW 71A.10.020(~~(5)~~).

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

15 (~~(13)~~) (14) "Furlough" means an authorized leave of absence for
16 a resident of a state institution operated by the department
17 designated for the custody, care, and treatment of the criminally
18 insane, consistent with an order of conditional release from the
19 court under this chapter, without any requirement that the resident
20 be accompanied by, or be in the custody of, any law enforcement or
21 institutional staff, while on such unescorted leave.

22 (~~(14)~~) (15) "Genuine doubt as to competency" means that there
23 is reasonable cause to believe, based upon actual interactions with
24 or observations of the defendant or information provided by counsel,
25 that a defendant is incompetent to stand trial.

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

34 (~~(15)~~) (17) "History of one or more violent acts" means violent
35 acts committed during: (a) The ten-year period of time prior to the
36 filing of criminal charges; plus (b) the amount of time equal to time
37 spent during the ten-year period in a mental health facility or in
38 confinement as a result of a criminal conviction.

1 (~~(16)~~) (18) "Immediate family member" means a spouse, child,
2 stepchild, parent, stepparent, grandparent, sibling, or domestic
3 partner.

4 (~~(17)~~) (19) "Incompetency" means a person lacks the capacity to
5 understand the nature of the proceedings against him or her or to
6 assist in his or her own defense as a result of mental disease or
7 defect.

8 (~~(18)~~) (20) "Indigent" means any person who is financially
9 unable to obtain counsel or other necessary expert or professional
10 services without causing substantial hardship to the person or his or
11 her family.

12 (~~(19)~~) (21) "Individualized service plan" means a plan prepared
13 by a developmental disabilities professional with other professionals
14 as a team, for an individual with developmental disabilities, which
15 shall state:

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

18 (b) The conditions and strategies necessary to achieve the
19 purposes of habilitation;

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

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

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

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

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

31 (~~(20)~~) (22) "Professional person" means:

32 (a) A psychiatrist licensed as a physician and surgeon in this
33 state who has, in addition, completed three years of graduate
34 training in psychiatry in a program approved by the American medical
35 association or the American osteopathic association and is certified
36 or eligible to be certified by the American board of psychiatry and
37 neurology or the American osteopathic board of neurology and
38 psychiatry;

39 (b) A psychologist licensed as a psychologist pursuant to chapter
40 18.83 RCW;

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

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

6 ~~((21))~~ (23) "Release" means legal termination of the court-
7 ordered commitment under the provisions of this chapter.

8 ~~((22))~~ (24) "Secretary" means the secretary of the department
9 of social and health services or his or her designee.

10 ~~((23))~~ (25) "Treatment" means any currently standardized
11 medical or mental health procedure including medication.

12 ~~((24))~~ (26) "Treatment records" include registration and all
13 other records concerning persons who are receiving or who at any time
14 have received services for mental illness, which are maintained by
15 the department, by behavioral health administrative services
16 organizations and their staffs, by managed care organizations and
17 their staffs, and by treatment facilities. Treatment records do not
18 include notes or records maintained for personal use by a person
19 providing treatment services for the department, behavioral health
20 administrative services organizations, managed care organizations, or
21 a treatment facility if the notes or records are not available to
22 others.

23 ~~((25))~~ (27) "Violent act" means behavior that: (a) (i) Resulted
24 in; (ii) if completed as intended would have resulted in; or (iii)
25 was threatened to be carried out by a person who had the intent and
26 opportunity to carry out the threat and would have resulted in,
27 homicide, nonfatal injuries, or substantial damage to property; or
28 (b) recklessly creates an immediate risk of serious physical injury
29 to another person. As used in this subsection, "nonfatal injuries"
30 means physical pain or injury, illness, or an impairment of physical
31 condition. "Nonfatal injuries" shall be construed to be consistent
32 with the definition of "bodily injury," as defined in RCW 9A.04.110.

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

35 (1) (a) Whenever a defendant has pleaded not guilty by reason of
36 insanity, ~~((or there is reason to doubt his or her competency,))~~ the
37 court on its own motion or on the motion of any party shall either
38 appoint or request the secretary to designate a qualified expert or
39 professional person, who shall be approved by the prosecuting

1 attorney, to evaluate and report upon the mental condition of the
2 defendant.

3 (b) Whenever there is a doubt as to competency, the court on its
4 own motion or on the motion of any party shall first review the
5 allegations of incompetency. The court shall make a determination of
6 whether sufficient facts have been provided to form a genuine doubt
7 as to competency based on information provided by counsel, judicial
8 colloquy, or direct observation of the defendant. If a genuine doubt
9 as to competency exists, the court shall either appoint or request
10 the secretary to designate a qualified expert or professional person,
11 who shall be approved by the prosecuting attorney, to evaluate and
12 report upon the mental condition of the defendant.

13 (c) The signed order of the court shall serve as authority for
14 the evaluator to be given access to all records held by any mental
15 health, medical, educational, or correctional facility that relate to
16 the present or past mental, emotional, or physical condition of the
17 defendant. If the court is advised by any party that the defendant
18 may have a developmental disability, the evaluation must be performed
19 by a developmental disabilities professional and the evaluator shall
20 have access to records of the developmental disabilities
21 administration of the department.

22 ~~((e))~~ (d) The evaluator shall assess the defendant in a jail,
23 detention facility, in the community, or in court to determine
24 whether a period of inpatient commitment will be necessary to
25 complete an accurate evaluation. If inpatient commitment is needed,
26 the signed order of the court shall serve as authority for the
27 evaluator to request the jail or detention facility to transport the
28 defendant to a hospital or secure mental health facility for a period
29 of commitment not to exceed fifteen days from the time of admission
30 to the facility. Otherwise, the evaluator shall complete the
31 evaluation.

32 ~~((d))~~ (e) The court may commit the defendant for evaluation to
33 a hospital or secure mental health facility without an assessment if:
34 (i) The defendant is charged with murder in the first or second
35 degree; (ii) the court finds that it is more likely than not that an
36 evaluation in the jail will be inadequate to complete an accurate
37 evaluation; or (iii) the court finds that an evaluation outside the
38 jail setting is necessary for the health, safety, or welfare of the
39 defendant. The court shall not order an initial inpatient evaluation
40 for any purpose other than a competency evaluation.

1 (~~(e)~~) (f) The order shall indicate whether, in the event the
2 defendant is committed to a hospital or secure mental health facility
3 for evaluation, all parties agree to waive the presence of the
4 defendant or to the defendant's remote participation at a subsequent
5 competency hearing or presentation of an agreed order if the
6 recommendation of the evaluator is for continuation of the stay of
7 criminal proceedings, or if the opinion of the evaluator is that the
8 defendant remains incompetent and there is no remaining restoration
9 period, and the hearing is held prior to the expiration of the
10 authorized commitment period.

11 (~~(f)~~) (g) When a defendant is ordered to be evaluated under
12 this subsection (1), or when a party or the court determines at first
13 appearance that an order for evaluation under this subsection will be
14 requested or ordered if charges are pursued, the court may delay
15 granting bail until the defendant has been evaluated for competency
16 or sanity and appears before the court. Following the evaluation, in
17 determining bail the court shall consider: (i) Recommendations of the
18 evaluator regarding the defendant's competency, sanity, or diminished
19 capacity; (ii) whether the defendant has a recent history of one or
20 more violent acts; (iii) whether the defendant has previously been
21 acquitted by reason of insanity or found incompetent; (iv) whether it
22 is reasonably likely the defendant will fail to appear for a future
23 court hearing; and (v) whether the defendant is a threat to public
24 safety.

25 (h) If the defendant ordered to be evaluated under this
26 subsection (1) is charged with a serious traffic offense under RCW
27 9.94A.030, or a felony version of a serious traffic offense, the
28 prosecutor may make a motion to modify the defendant's conditions of
29 release to include a condition prohibiting the defendant from driving
30 during the pendency of the competency evaluation period.

31 (2) The court may direct that a qualified expert or professional
32 person retained by or appointed for the defendant be permitted to
33 witness the evaluation authorized by subsection (1) of this section,
34 and that the defendant shall have access to all information obtained
35 by the court appointed experts or professional persons. The
36 defendant's expert or professional person shall have the right to
37 file his or her own report following the guidelines of subsection (3)
38 of this section. If the defendant is indigent, the court shall upon
39 the request of the defendant assist him or her in obtaining an expert
40 or professional person.

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

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

3 (b) A diagnosis or description of the current mental status of
4 the defendant;

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

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

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

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

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

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

1 (6) If a finding of the competency evaluation under this section
2 or under RCW 10.77.084 is that the individual is not competent due to
3 an intellectual or developmental disability, the evaluator shall
4 notify the department, which shall refer the individual to the
5 developmental disabilities administration of the department for
6 review of eligibility for services. Information about availability of
7 services must be provided to the forensic navigator.

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

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

19 (1)(a) The legislature establishes a performance target of seven
20 days or fewer to extend an offer of admission to a defendant in
21 pretrial custody for inpatient competency evaluation or inpatient
22 competency restoration services, when access to the services is
23 legally authorized.

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

27 (i) To complete a competency evaluation in jail and distribute
28 the evaluation report; and

29 (ii) To extend an offer of admission to a defendant ordered to be
30 committed to ~~((a state hospital))~~ the department for placement in a
31 facility operated by or contracted by the department following
32 dismissal of charges based on incompetency to stand trial under RCW
33 10.77.086.

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

37 (2)(a) A maximum time limit of seven days as measured from the
38 department's receipt of the court order, or a maximum time limit of
39 14 days as measured from signature of the court order, whichever is

1 shorter, is established to complete the services specified in
2 subsection (1)(a) of this section, subject to the limitations under
3 subsection (9) of this section.

4 (b) A maximum time limit of 14 days as measured from the
5 department's receipt of the court order, or a maximum time limit of
6 21 days as measured from signature of the court order, whichever is
7 shorter, is established to complete the services specified in
8 subsection (1)(b) of this section, subject to the limitations under
9 subsection (9) of this section.

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

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

22 (a) Despite a timely request, the department has not received
23 necessary medical information regarding the current medical status of
24 a defendant;

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

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

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

37 (e) Completion of the referral requires additional time to
38 accommodate the availability or participation of counsel, court
39 personnel, interpreters, or the defendant;

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

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

7 (5) The department shall provide written notice to the court when
8 it will not be able to meet the maximum time limits under subsection
9 (2) of this section and identify the reasons for the delay and
10 provide a reasonable estimate of the time necessary to complete the
11 competency service. Good cause for an extension for the additional
12 time estimated by the department shall be presumed absent a written
13 response from the court or a party received by the department within
14 seven days.

15 (6) The department shall:

16 (a) Develop, document, and implement procedures to monitor the
17 clinical status of defendants admitted to a state hospital for
18 competency services that allow the state hospital to accomplish early
19 discharge for defendants for whom clinical objectives have been
20 achieved or may be achieved before expiration of the commitment
21 period;

22 (b) Investigate the extent to which patients admitted to a state
23 hospital under this chapter overstay time periods authorized by law
24 and take reasonable steps to limit the time of commitment to
25 authorized periods; and

26 (c) Establish written standards for the productivity of forensic
27 evaluators and utilize these standards to internally review the
28 performance of forensic evaluators.

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

36 (8) The department shall report annually to the legislature and
37 the executive on the timeliness of services related to competency to
38 stand trial and the timeliness with which court referrals accompanied
39 by charging documents, discovery, and criminal history information
40 are provided to the department relative to the signature date of the

1 court order. The report must be in a form that is accessible to the
2 public and that breaks down performance by county.

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

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

9 (1) Subject to the limitations described in subsection (2) of
10 this section, a court may appoint an impartial forensic navigator
11 employed by or contracted by the department to assist individuals who
12 have been referred for competency evaluation and shall appoint a
13 forensic navigator in circumstances described under section 9 of this
14 act.

15 (2) A forensic navigator must assist the individual to access
16 services related to diversion and community outpatient competency
17 restoration. The forensic navigator must assist the individual,
18 prosecuting attorney, defense attorney, and the court to understand
19 the options available to the individual and be accountable as an
20 officer of the court for faithful execution of the responsibilities
21 outlined in this section.

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

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

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

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

31 (d) To present information to the court in order to assist the
32 court in understanding the treatment options available to the
33 individual to support the entry of orders for diversion from the
34 forensic mental health system or for community outpatient competency
35 restoration, ((and)) to facilitate that transition; ((and

36 (d))) (e) To provide regular updates to the court and parties of
37 the status of the individual's participation in diversion services
38 and be responsive to inquiries by the parties about treatment status;

1 (f) When the individual is ordered to receive community
2 outpatient restoration, to provide services to the individual
3 including:

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

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

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

8 (iv) Providing information to the court concerning the
9 individual's progress and compliance with court-ordered conditions of
10 release, which may include appearing at court hearings to provide
11 information to the court;

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

14 (vi) Assisting the individual with obtaining prescribed
15 medication and encouraging adherence with prescribed medication;

16 (vii) Assessing the individual for appropriateness for assisted
17 outpatient treatment under chapter 71.05 RCW and coordinating the
18 initiation of an assisted outpatient treatment order if appropriate
19 as part of a diversion program plan;

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

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

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

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

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

38 (4) Forensic navigators may submit ~~((nonclinical))~~
39 recommendations to the court regarding treatment and restoration

1 options for the individual, which the court may consider and weigh in
2 conjunction with the recommendations of all of the parties.

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

5 (6) The signed order for competency evaluation from the court
6 shall serve as authority for the forensic navigator to be given
7 access to all records held by a behavioral health, educational, or
8 law enforcement agency or a correctional facility that relates to an
9 individual. Information that is protected by state or federal law,
10 including health information, shall not be entered into the court
11 record without the consent of the individual or their defense
12 attorney.

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

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

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

22 (1)(a) If at any time during the pendency of an action and prior
23 to judgment the court finds, following a report as provided in RCW
24 10.77.060, a defendant is incompetent, the court shall order the
25 proceedings against the defendant be stayed except as provided in
26 subsection (4) of this section. If the defendant is charged with a
27 serious traffic offense under RCW 9.94A.030, or a felony version of a
28 serious traffic offense, the court may order the clerk to transmit an
29 order to the department of licensing for revocation of the
30 defendant's driver's license for a period of one year.

31 (b) The court may order a defendant who has been found to be
32 incompetent to undergo competency restoration treatment at a facility
33 designated by the department if the defendant is eligible under RCW
34 10.77.086 or 10.77.088. At the end of each competency restoration
35 period or at any time a professional person determines competency has
36 been, or is unlikely to be, restored, the defendant shall be returned
37 to court for a hearing, except that if the opinion of the
38 professional person is that the defendant remains incompetent and the
39 hearing is held before the expiration of the current competency

1 restoration period, the parties may agree to waive the defendant's
2 presence, to remote participation by the defendant at a hearing, or
3 to presentation of an agreed order in lieu of a hearing. The facility
4 shall promptly notify the court and all parties of the date on which
5 the competency restoration period commences and expires so that a
6 timely hearing date may be scheduled.

7 (c) The court's order for inpatient restoration, shall specify
8 whether the department has the authority to change the defendant's
9 placement to a step-down facility or outpatient competency
10 restoration program if the department determines that such placement
11 is clinically appropriate given the defendant's progress in
12 restoration services.

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

23 ~~((d))~~ (e) If at any time during the proceeding the court finds,
24 following notice and hearing, a defendant is not likely to regain
25 competency, the court shall dismiss the proceedings without prejudice
26 and refer the defendant for civil commitment evaluation or
27 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
28 10.77.088.

29 (f) If the court issues an order directing revocation of the
30 defendant's driver's license under (a) of this subsection, and the
31 court subsequently finds that the defendant's competency has been
32 restored, the court shall order the clerk to transmit an order to the
33 department of licensing for reinstatement of the defendant's driver's
34 license. The court may direct the clerk to transmit an order
35 reinstating the defendant's driver's license before the end of one
36 year for good cause upon the petition of the defendant.

37 (2) If the defendant is referred for evaluation by a designated
38 crisis responder under this chapter, the designated crisis responder
39 shall provide prompt written notification of the results of the
40 evaluation and whether the person was detained. The notification

1 shall be provided to the court in which the criminal action was
2 pending, the prosecutor, the defense attorney in the criminal action,
3 and the facility that evaluated the defendant for competency.

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

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

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

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

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

35 (a) 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;

1 (ii) Abstain from alcohol and unprescribed drugs; and
2 (iii) Comply with urinalysis or breathalyzer monitoring if
3 needed.

4 (b) If the court orders inpatient competency restoration, the
5 department shall place the defendant in an appropriate facility of
6 the department for competency restoration.

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

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

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

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

38 (3) If the court determines or the parties agree before the
39 initial competency restoration period or at any subsequent stage of
40 the proceedings that the defendant is unlikely to regain competency,

1 the court may dismiss the charges without prejudice without ordering
2 the defendant to undergo an initial or further period of competency
3 restoration treatment, in which case the court shall order that the
4 defendant be referred for evaluation for civil commitment in the
5 manner provided in subsection (5) of this section.

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

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

1 within a reasonable period of time. If the court or jury makes such a
2 finding, the court may extend the period of commitment for up to an
3 additional six months.

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

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

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

14 (a) Shall dismiss the proceedings without prejudice and detain
15 the defendant (~~(for sufficient time to allow the designated crisis~~
16 ~~responder to evaluate the defendant and consider initial detention~~
17 ~~proceedings under chapter 71.05 RCW)) pursuant to subsection (5) of
18 this section, unless the prosecutor objects to the dismissal and
19 provides notice of a motion for an order for competency restoration
20 treatment, in which case the court shall schedule a hearing within
21 seven days.~~

22 (b) At the hearing, the prosecuting attorney must establish that
23 there is a compelling state interest to order competency restoration
24 treatment for the defendant. The court may consider prior criminal
25 history, prior history in treatment, prior history of violence, the
26 quality and severity of the pending charges, any history that
27 suggests whether competency restoration treatment is likely to be
28 successful, in addition to the factors listed under RCW 10.77.092. If
29 the prosecuting attorney proves by a preponderance of the evidence
30 that there is a compelling state interest in ordering competency
31 restoration treatment, then the court shall issue an order in
32 accordance with subsection (2) of this section. If the defendant is
33 subject to an order under chapter 71.05 RCW or proceedings under
34 chapter 71.05 RCW have been initiated, there is a rebuttable
35 presumption that the state's compelling interest has been satisfied.
36 If the defendant is charged with a serious traffic offense under RCW
37 9.94A.030, the court may order the clerk to transmit an order to the
38 department of licensing for revocation of the defendant's driver's
39 license for a period of one year. The court shall direct the clerk to

1 transmit an order to the department of licensing reinstating the
2 defendant's driver's license if the defendant is subsequently
3 restored to competency, and may do so at any time before the end of
4 one year for good cause upon the petition of the defendant.

5 (2) (a) If a court finds pursuant to subsection (1)(b) of this
6 section that there is a compelling state interest in pursuing
7 competency restoration treatment, the court shall ~~((commit the~~
8 ~~defendant to the custody of the secretary for inpatient competency~~
9 ~~restoration, or may alternatively))~~ order the defendant to receive
10 outpatient competency restoration ~~((based on a recommendation from a~~
11 ~~forensic navigator and input from the parties))~~ consistent with the
12 recommendation of the forensic navigator, unless the court finds that
13 an order for outpatient competency restoration is inappropriate
14 considering the health and safety of the defendant and risks to
15 public safety.

16 ~~((a))~~ (b) To be eligible for an order for outpatient competency
17 restoration, a defendant must be ~~((clinically appropriate and be))~~
18 willing to:

19 (i) Adhere to medications or receive prescribed intramuscular
20 medication;

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

22 (iii) Comply with urinalysis or breathalyzer monitoring if
23 needed.

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

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

1 defendant to the department and, if applicable, the forensic
2 navigator.

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

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

39 (ii) The department shall notify the court and parties of the
40 defendant's admission for inpatient competency restoration before the

1 close of the next judicial day. The court shall schedule a hearing
2 within five days to review the conditions of release of the defendant
3 and anticipated release from treatment and issue appropriate orders.

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

10 (g) If the court does not order the defendant to receive
11 outpatient competency restoration under (a) of this subsection, the
12 court shall commit the defendant to the department for placement in a
13 facility operated or contracted by the department for inpatient
14 competency restoration.

15 (3) The placement under subsection (2) of this section shall not
16 exceed 29 days if the defendant is ordered to receive inpatient
17 competency restoration, and shall not exceed 90 days if the defendant
18 is ordered to receive outpatient competency restoration. The court
19 may order any combination of this subsection, but the total period of
20 inpatient competency restoration may not exceed 29 days.

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

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

33 (b) If the defendant was in custody and not on conditional
34 release at the time of dismissal, the defendant shall be detained and
35 sent to an evaluation and treatment facility for up to 120 hours if
36 the defendant has not undergone competency restoration services or
37 has engaged in outpatient competency restoration services and up to
38 72 hours if the defendant engaged in inpatient competency restoration
39 services, excluding Saturdays, Sundays, and holidays, for evaluation
40 for purposes of filing a petition under chapter 71.05 RCW. The 120-

1 hour or 72-hour period shall commence upon the next nonholiday
2 weekday following the court order and shall run to the end of the
3 last nonholiday weekday within the 120-hour or 72-hour period.

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

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

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

30 (1) In counties with a forensic navigator program, a forensic
31 navigator shall:

32 (a) Meet, interview, and observe all defendants charged with a
33 nonfelony who have had two or more competency evaluations in the
34 preceding 24 months on separate charges or cause numbers and
35 determine the defendants' willingness to engage with services under
36 this section; and

37 (b) Provide a diversion program plan to the parties in each case
38 that includes a recommendation for a diversion program to defense
39 counsel and the prosecuting attorney. Services under a diversion

1 program may include a referral for assisted outpatient treatment
2 under chapter 71.05 RCW.

3 (2) If the parties agree on the diversion program recommended by
4 the forensic navigator, the prosecutor shall request dismissal of the
5 criminal charges.

6 (3) If the parties do not agree on the diversion program, the
7 defense may move the court for an order dismissing the criminal
8 charges without prejudice and referring the defendant to the services
9 described in the diversion program. The court shall hold a hearing on
10 this motion within 10 days. The court shall grant the defense motion
11 if it finds by a preponderance of the evidence that the defendant is
12 amenable to the services described in the diversion program and can
13 safely receive services in the community.

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

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

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

28 (a) Any violent offense, sex offense, serious traffic offense,
29 and most serious offense, as those terms are defined in RCW
30 9.94A.030;

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

33 (c) Any offense contained in chapter 9.41 RCW (firearms and
34 dangerous weapons);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) Subject to the availability of funds appropriated for this
11 specific purpose, the department shall develop a program for
12 individuals who have been involved with the criminal justice system
13 and who have been found under RCW 10.77.084 as incompetent to stand
14 trial due to an intellectual or developmental disability or dementia.
15 The program must involve wraparound services and housing supports
16 appropriate to the needs of the individual. It is sufficient to meet
17 the criteria for participation in this program if the individual has
18 recently been the subject of criminal charges that were dismissed
19 without prejudice and was found incompetent to stand trial due to an
20 intellectual or developmental disability or dementia.

21 (2) In the event that a court orders the commitment of an
22 individual to the custody of the department under RCW 10.77.086(5)
23 who was found incompetent to stand trial due to an intellectual or
24 developmental disability or dementia, the department shall place the
25 individual in the program either directly from the jail or as soon
26 thereafter as may be practicable, without maintaining the individual
27 at an inpatient facility for longer than is clinically necessary.
28 Nothing in this subsection prohibits the department from returning
29 the individual to their home or to another less restrictive setting
30 if such placement is appropriate, which may include provision of
31 supportive services to help the person maintain stability.

32 NEW SECTION. **Sec. 13.** Subject to the availability of funds
33 appropriated for this specific purpose, the health care authority
34 shall require the programs it contracts with to increase compensation
35 for staff in outpatient competency restoration programs to provide
36 compensation at competitive levels to improve recruitment and allow
37 for the full implementation of outpatient competency restoration
38 programs.

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

3 An outpatient competency restoration program must include access
4 to a prescriber.

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

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

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

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

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

34 (1) The department shall coordinate with cities, counties,
35 hospitals, and other public and private entities to identify
36 locations that may be commissioned or renovated for use in treating
37 clients committed to the department for competency evaluation,

1 competency restoration, civil conversion, or treatment following
2 acquittal by reason of insanity.

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

6 NEW SECTION. **Sec. 18.** Sections 6 through 8 of this act are
7 necessary for the immediate preservation of the public peace, health,
8 or safety, or support of the state government and its existing public
9 institutions, and take effect immediately.

--- END ---