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**SENATE BILL 5440**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Dhingra, Nguyen, Saldaña, Valdez, Van De Wege, and C. Wilson; by request of Office of the Governor

Read first time 01/18/23. Referred to Committee on Law & Justice.

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 10.77.075, 10.77.078, 10.77.084, 10.77.086, 10.77.086, and 10.77.088;  
7 reenacting and amending RCW 10.77.010; adding a new section to  
8 chapter 10.77 RCW; providing effective dates; and declaring an  
9 emergency.

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

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

13 As used in this chapter:

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

16 (2) "Alternative therapeutic unit" means a jail-based competency  
17 restoration unit as certified by the department, which includes  
18 standards to ensure the unit is sufficiently safe and therapeutic for  
19 defendants.

20 (3) "Authority" means the Washington state health care authority.

1       ~~((3))~~ (4) "Commitment" means the determination by a court that  
2 a person should be detained for a period of either evaluation or  
3 treatment, or both, in an inpatient or a less-restrictive setting.

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

7       ~~((5))~~ (6) "Conditional release" means modification of a court-  
8 ordered commitment, which may be revoked upon violation of any of its  
9 terms.

10       ~~((6))~~ (7) "County" means the county in which criminal charges  
11 have been filed and an order for competency restoration has been  
12 entered. In the instance where more than one county has entered a  
13 competency restoration order, the county with the most serious charge  
14 shall have responsibility.

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

21       ~~((7))~~ (9) "Department" means the state department of social and  
22 health services.

23       ~~((8))~~ (10) "Designated crisis responder" has the same meaning  
24 as provided in RCW 71.05.020.

25       ~~((9))~~ (11) "Detention" or "detain" means the lawful confinement  
26 of a person, under the provisions of this chapter, pending  
27 evaluation.

28       ~~((10))~~ (12) "Developmental disabilities professional" means a  
29 person who has specialized training and ~~((three years of))~~ experience  
30 in directly treating or working with persons with developmental  
31 disabilities and is a psychiatrist or psychologist, or a social  
32 worker, and such other developmental disabilities professionals as  
33 may be defined by rules adopted by the secretary.

34       ~~((11))~~ (13) "Developmental disability" means the condition as  
35 defined in RCW 71A.10.020~~((5))~~.

36       ~~((12))~~ (14) "Discharge" means the termination of hospital  
37 medical authority. The commitment may remain in place, be terminated,  
38 or be amended by court order.

39       ~~((13))~~ (15) "Furlough" means an authorized leave of absence for  
40 a resident of a state institution operated by the department

1 designated for the custody, care, and treatment of the criminally  
2 insane, consistent with an order of conditional release from the  
3 court under this chapter, without any requirement that the resident  
4 be accompanied by, or be in the custody of, any law enforcement or  
5 institutional staff, while on such unescorted leave.

6 ~~((14))~~ (16) "Genuine doubt as to competency" means that there  
7 is reasonable cause to believe based upon actual interactions with  
8 and/or observations of the defendant, that a defendant is  
9 incompetent.

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

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

23 ~~((16))~~ (19) "Immediate family member" means a spouse, child,  
24 stepchild, parent, stepparent, grandparent, sibling, or domestic  
25 partner.

26 ~~((17))~~ (20) "Incompetency" means a person lacks the capacity to  
27 understand the nature of the proceedings against him or her or to  
28 assist in his or her own defense as a result of mental disease or  
29 defect.

30 ~~((18))~~ (21) "Indigent" means any person who is financially  
31 unable to obtain counsel or other necessary expert or professional  
32 services without causing substantial hardship to the person or his or  
33 her family.

34 ~~((19))~~ (22) "Individualized service plan" means a plan prepared  
35 by a developmental disabilities professional with other professionals  
36 as a team, for an individual with developmental disabilities, which  
37 shall state:

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

1 (b) The conditions and strategies necessary to achieve the  
2 purposes of habilitation;

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

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

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

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

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

14 (~~(20)~~) (23) "Professional person" means:

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

22 (b) A psychologist licensed as a psychologist pursuant to chapter  
23 18.83 RCW;

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

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

29 (~~(21)~~) (24) "Release" means legal termination of the court-  
30 ordered commitment under the provisions of this chapter.

31 (~~(22)~~) (25) "Secretary" means the secretary of the department  
32 of social and health services or his or her designee.

33 (~~(23)~~) (26) "Treatment" means any currently standardized  
34 medical or mental health procedure including medication.

35 (~~(24)~~) (27) "Treatment records" include registration and all  
36 other records concerning persons who are receiving or who at any time  
37 have received services for mental illness, which are maintained by  
38 the department, by behavioral health administrative services  
39 organizations and their staffs, by managed care organizations and  
40 their staffs, and by treatment facilities. Treatment records do not

1 include notes or records maintained for personal use by a person  
2 providing treatment services for the department, behavioral health  
3 administrative services organizations, managed care organizations, or  
4 a treatment facility if the notes or records are not available to  
5 others.

6 ~~((25))~~ (28) "Violent act" means behavior that: (a)(i) Resulted  
7 in; (ii) if completed as intended would have resulted in; or (iii)  
8 was threatened to be carried out by a person who had the intent and  
9 opportunity to carry out the threat and would have resulted in,  
10 homicide, nonfatal injuries, or substantial damage to property; or  
11 (b) recklessly creates an immediate risk of serious physical injury  
12 to another person. As used in this subsection, "nonfatal injuries"  
13 means physical pain or injury, illness, or an impairment of physical  
14 condition. "Nonfatal injuries" shall be construed to be consistent  
15 with the definition of "bodily injury," as defined in RCW 9A.04.110.

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

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

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

34 (c) The signed order of the court shall serve as authority for  
35 the evaluator to be given access to all records held by any mental  
36 health, medical, educational, or correctional facility that relate to  
37 the present or past mental, emotional, or physical condition of the  
38 defendant. If the court is advised by any party that the defendant  
39 may have a developmental disability, the evaluation must be performed

1 by a developmental disabilities professional and the evaluator shall  
2 have access to records of the developmental disabilities  
3 administration of the department.

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

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

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

33 ~~((f))~~ (g) When a defendant is ordered to be evaluated under  
34 this subsection (1), or when a party or the court determines at first  
35 appearance that an order for evaluation under this subsection will be  
36 requested or ordered if charges are pursued, the court may delay  
37 granting bail until the defendant has been evaluated for competency  
38 or sanity and appears before the court. Following the evaluation, in  
39 determining bail the court shall consider: (i) Recommendations of the  
40 evaluator regarding the defendant's competency, sanity, or diminished

1 capacity; (ii) whether the defendant has a recent history of one or  
2 more violent acts; (iii) whether the defendant has previously been  
3 acquitted by reason of insanity or found incompetent; (iv) whether it  
4 is reasonably likely the defendant will fail to appear for a future  
5 court hearing; and (v) whether the defendant is a threat to public  
6 safety.

7 (2) The court may direct that a qualified expert or professional  
8 person retained by or appointed for the defendant be permitted to  
9 witness the evaluation authorized by subsection (1) of this section,  
10 and that the defendant shall have access to all information obtained  
11 by the court appointed experts or professional persons. The  
12 defendant's expert or professional person shall have the right to  
13 file his or her own report following the guidelines of subsection (3)  
14 of this section. If the defendant is indigent, the court shall upon  
15 the request of the defendant assist him or her in obtaining an expert  
16 or professional person.

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

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

19 (b) A diagnosis or description of the current mental status of  
20 the defendant;

21 (c) If the defendant suffers from a mental disease or defect, or  
22 has a developmental disability, an opinion as to (~~competency~~) their  
23 capacity to proceed;

24 (d) If the defendant has indicated his or her intention to rely  
25 on the defense of insanity pursuant to RCW 10.77.030, and an  
26 evaluation and report by an expert or professional person has been  
27 provided concluding that the defendant was criminally insane at the  
28 time of the alleged offense, an opinion as to the defendant's sanity  
29 at the time of the act, and an opinion as to whether the defendant  
30 presents a substantial danger to other persons, or presents a  
31 substantial likelihood of committing criminal acts jeopardizing  
32 public safety or security, unless kept under further control by the  
33 court or other persons or institutions, provided that no opinion  
34 shall be rendered under this subsection (3)(d) unless the evaluator  
35 or court determines that the defendant is competent to stand trial;

36 (e) When directed by the court, if an evaluation and report by an  
37 expert or professional person has been provided concluding that the  
38 defendant lacked the capacity at the time of the offense to form the  
39 mental state necessary to commit the charged offense, an opinion as

1 to the capacity of the defendant to have a particular state of mind  
2 which is an element of the offense charged;

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

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

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

18 (6) If completion of the evaluation is not achieved after two  
19 attempts at scheduling with the defendant, the department will submit  
20 a report to the court and parties and include the date and time of  
21 the next evaluation. If the evaluation is not achieved after this  
22 third attempt, the court may issue a warrant for the defendant and  
23 shall vacate the order for a competency evaluation.

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

26 (1)(a) The legislature establishes a performance target of seven  
27 days or fewer to extend an offer of admission to a defendant in  
28 pretrial custody for inpatient competency evaluation or inpatient  
29 competency restoration services, when access to the services is  
30 legally authorized.

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

34 (i) To complete a competency evaluation in jail and distribute  
35 the evaluation report; and

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



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

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

10 (b) A maximum time limit of 14 days as measured from the  
11 (~~department's~~) receipt of the court order, or a maximum time limit  
12 of 21 days as measured from signature of the court order, whichever  
13 is shorter, is established to complete the services specified in  
14 subsection (1) (b) of this section, subject to the limitations under  
15 subsection (9) of this section.

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

21 (4) It shall be a defense to an allegation that the department or  
22 the county has exceeded the maximum time limits for completion of  
23 competency services described in subsection (2) of this section if  
24 the department or the county can demonstrate by a preponderance of  
25 the evidence that the reason for exceeding the maximum time limits  
26 was outside of (~~the department's~~) its control including, but not  
27 limited to, the following circumstances:

28 (a) Despite a timely request, the department or the county has  
29 not received necessary medical information regarding the current  
30 medical status of a defendant;

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

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

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

3 (e) Completion of the referral requires additional time to  
4 accommodate the availability or participation of counsel, court  
5 personnel, interpreters, or the defendant;

6 (f) The defendant asserts legal rights that result in a delay in  
7 the provision of competency services; (~~(e)~~)

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

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

20 (6) The department shall:

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

27 (b) Investigate the extent to which patients admitted to a state  
28 hospital under this chapter overstay time periods authorized by law  
29 and take reasonable steps to limit the time of commitment to  
30 authorized periods; and

31 (c) Establish written standards for the productivity of forensic  
32 evaluators and utilize these standards to internally review the  
33 performance of forensic evaluators.

34 (7) Following any quarter in which (~~(a state hospital)~~) the  
35 department or a county has failed to meet one or more of the  
36 performance targets or maximum time limits under subsection (1) or  
37 (2) of this section, the (~~(department)~~) responsible entity shall  
38 report (~~(to the executive and the legislature)~~) the extent of this  
39 deviation and describe any corrective action being taken to improve  
40 performance. Any county required to report shall provide their report

1 to the department. The department shall report to the executive and  
2 the legislature on behalf of the state and the counties. This report  
3 shall be made publicly available. An average may be used to determine  
4 timeliness under this subsection.

5 (8) The department shall report annually to the legislature and  
6 the executive on the timeliness of services related to competency to  
7 stand trial and the timeliness with which court referrals accompanied  
8 by charging documents, discovery, and criminal history information  
9 are provided to the department relative to the signature date of the  
10 court order. Any county providing competency restoration services  
11 shall report to the department on the timeliness of services  
12 provided. The report must be in a form that is accessible to the  
13 public and that breaks down performance by county.

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

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

20 (1) Subject to the limitations described in (~~this section~~)  
21 subsection (2) of this section, a court may appoint an impartial  
22 forensic navigator employed by or contracted by the department to  
23 assist individuals who have been referred for competency evaluation.

24 (2) A forensic navigator must assist the individual to access  
25 services related to diversion and community outpatient competency  
26 restoration. The forensic navigator must assist the individual,  
27 prosecuting attorney, defense attorney, and the court to understand  
28 the options available to the individual and be accountable as an  
29 officer of the court for faithful execution of the responsibilities  
30 outlined in this section.

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

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

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

38 (c) To present information to the court in order to assist the  
39 court in understanding the treatment options available to the

1 individual to support the entry of orders for diversion from the  
2 forensic mental health system or for community outpatient competency  
3 restoration, and to facilitate that transition; (~~and~~)

4 (d) When the individual is ordered to receive community  
5 outpatient restoration, to provide services to the individual  
6 including:

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

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

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

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

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

17 (vi) Assisting the individual with obtaining prescribed  
18 medication and encouraging adherence with prescribed medication;

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

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

23 (ix) When the individual is a high utilizer, attempting to  
24 connect the individual with high utilizer services; and

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

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

36 (4) Forensic navigators may submit nonclinical recommendations to  
37 the court regarding treatment and restoration options for the  
38 individual, which the court may consider and weigh in conjunction  
39 with the recommendations of all of the parties.

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

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

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

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

18 (9) For individuals charged with a misdemeanor within counties  
19 that have outpatient competency restoration, forensic navigator,  
20 forensic projects for assistance in transition from homelessness, and  
21 forensic housing and recovery through peer services programs, and  
22 have had two or more competency evaluations in the preceding 24  
23 months on separate charges/cause numbers, a forensic navigator will  
24 do the following:

25 (a) Meet with, interview, observe the individual, and complete a  
26 recommended diversion program plan;

27 (b) If the individual is enrolled into the diversion program,  
28 provide monthly status updates to the court and report disengagement  
29 of the person from diversion services; and

30 (c) Work with the individual for up to six months while engaging  
31 in the program.

32 **Sec. 5.** RCW 10.77.075 and 2015 1st sp.s. c 7 s 2 are each  
33 amended to read as follows:

34 Within twenty-four hours of the signing of a court order  
35 requesting the secretary to provide a competency evaluation or the  
36 department or the county to provide competency restoration treatment:

37 (1) The clerk of the court shall provide the court order and the  
38 charging documents, including the request for bail and certification  
39 of probable cause, to the (~~state hospital~~) appropriate entity. If

1 the order is for competency restoration treatment and the competency  
2 evaluation was provided by a qualified expert or professional person  
3 who was not designated by the secretary, the clerk shall also provide  
4 (~~the state hospital with~~) a copy of all previous court orders  
5 related to competency or criminal insanity and a copy of any of the  
6 evaluation reports;

7 (2) The prosecuting attorney shall provide the discovery packet,  
8 including a statement of the defendant's criminal history, to the  
9 (~~state hospital~~) department or the county as appropriate; and

10 (3) If the court order requires transportation of the defendant  
11 to (~~a state hospital~~) the department, the jail administrator shall  
12 provide the defendant's medical clearance information to the (~~state~~  
13 ~~hospital~~) department admission staff.

14 **Sec. 6.** RCW 10.77.078 and 2015 1st sp.s. c 7 s 3 are each  
15 amended to read as follows:

16 (1) A city or county jail shall transport a defendant to (~~a~~  
17 ~~state hospital or other~~) an appropriate secure facility as  
18 designated by the department or the county within one day of receipt  
19 of an offer of admission of the defendant for competency evaluation  
20 or restoration services.

21 (2) City and county jails must cooperate with competency  
22 evaluators and the department to arrange for competency evaluators to  
23 have reasonable, timely, and appropriate access to defendants for the  
24 purpose of performing evaluations under this chapter to accommodate  
25 the seven-day performance target for completing competency  
26 evaluations for defendants in custody.

27 **Sec. 7.** RCW 10.77.084 and 2016 sp.s. c 29 s 410 are each amended  
28 to read as follows:

29 (1)(a) If at any time during the pendency of an action and prior  
30 to judgment the court finds, following a report as provided in RCW  
31 10.77.060, a defendant is incompetent, the court shall order the  
32 proceedings against the defendant be stayed except as provided in  
33 subsection (4) of this section.

34 (b) The court may order a defendant who has been found to be  
35 incompetent to undergo competency restoration treatment (~~at a~~  
36 ~~facility designated by the department~~) if the defendant is eligible  
37 under RCW 10.77.086 or 10.77.088. At the end of each competency  
38 restoration period or at any time a professional person determines

1 competency has been, or is unlikely to be, restored, the defendant  
2 shall be returned to court for a hearing, except that if the opinion  
3 of the professional person is that the defendant remains incompetent  
4 and the hearing is held before the expiration of the current  
5 competency restoration period, the parties may agree to waive the  
6 defendant's presence, to remote participation by the defendant at a  
7 hearing, or to presentation of an agreed order in lieu of a hearing.  
8 The facility providing competency restoration shall promptly notify  
9 the court and all parties of the date on which the competency  
10 restoration period commences and expires so that a timely hearing  
11 date may be scheduled.

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

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

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

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

38 (4) A defendant receiving medication for either physical or  
39 mental problems shall not be prohibited from standing trial, if the  
40 medication either enables the defendant to understand the proceedings

1 against him or her and to assist in his or her own defense, or does  
2 not disable him or her from so understanding and assisting in his or  
3 her own defense.

4 (5) At or before the conclusion of any commitment period provided  
5 for by this section, the facility providing evaluation and treatment  
6 shall provide to the court a written report of evaluation which meets  
7 the requirements of RCW 10.77.060(3). For defendants charged with a  
8 felony, the report following the second competency restoration period  
9 or first competency restoration period if the defendant's  
10 incompetence is determined to be solely due to a developmental  
11 disability or the evaluator concludes that the defendant is not  
12 likely to regain competency must include an assessment of the  
13 defendant's future dangerousness which is evidence-based regarding  
14 predictive validity. An individual found not competent due to  
15 intellectual or developmental disability shall be referred by the  
16 behavioral health administration of the department to the  
17 developmental disabilities administration and reviewed for  
18 eligibility and services.

19 (6)(a) If a defendant is committed for competency restoration  
20 treatment through the county, at least 14 days prior to the  
21 expiration of any commitment period the county or facility providing  
22 restoration treatment must notify the department of the need for a  
23 written report of evaluation pursuant to subsection (5) of this  
24 section. The county or treating facility may also request an early  
25 evaluation based upon the recommendation of the treating facility.

26 (b) The notice to the department must be submitted electronically  
27 and include a location available to conduct the evaluation, a copy of  
28 the current competency restoration order, any treatment records  
29 regarding restoration, and a copy of the criminal discovery. The  
30 department must conduct any needed evaluation at least three days  
31 prior to the scheduled end of the commitment period.

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

34 (1) If the defendant is charged with a felony and determined to  
35 be incompetent, until he or she has regained the competency necessary  
36 to understand the proceedings against him or her and assist in his or  
37 her own defense, but in any event for a period of no longer than 90  
38 days, the court shall commit the defendant to the custody of the  
39 secretary for inpatient competency restoration, or may alternatively



1 order the defendant to receive outpatient competency restoration  
2 based on a recommendation from a forensic navigator and input from  
3 the parties.

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

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

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

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

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

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

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

1 time period for inpatient competency restoration shall be reduced by  
2 the time period spent in active treatment within the outpatient  
3 competency restoration program, excluding time periods in which the  
4 defendant was absent from the program and all time from notice of  
5 termination of the outpatient competency restoration period through  
6 the defendant's admission to the facility. The department shall  
7 obtain a placement for the defendant within seven days of the notice  
8 of intent to terminate the outpatient competency restoration  
9 placement.

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

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

29 (e) The court may not issue an order for outpatient competency  
30 restoration unless the department certifies that there is an  
31 available appropriate outpatient competency restoration program that  
32 has adequate space for the person at the time the order is issued or  
33 the court places the defendant under the guidance and control of a  
34 professional person identified in the court order.

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

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

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

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

28 (5) At the hearing upon the expiration of the second competency  
29 restoration period, or at the end of the first competency restoration  
30 period if the defendant is ineligible for a second or third  
31 competency restoration period under subsection (4) of this section,  
32 if the jury or court finds that the defendant is incompetent to stand  
33 trial, the court shall dismiss the charges without prejudice and  
34 order the defendant to be committed to (~~a state hospital~~) the  
35 department for up to 120 hours if the defendant has not undergone  
36 competency restoration services or has engaged in outpatient  
37 competency restoration services and up to 72 hours if the defendant  
38 engaged in inpatient competency restoration services starting from  
39 admission to the facility, excluding Saturdays, Sundays, and  
40 holidays, for evaluation for the purpose of filing a civil commitment

1 petition under chapter 71.05 RCW. However, the court shall not  
2 dismiss the charges if the court or jury finds that: (a) The  
3 defendant (i) is a substantial danger to other persons; or (ii)  
4 presents a substantial likelihood of committing criminal acts  
5 jeopardizing public safety or security; and (b) there is a  
6 substantial probability that the defendant will regain competency  
7 within a reasonable period of time. If the court or jury makes such a  
8 finding, the court may extend the period of commitment for up to an  
9 additional six months.

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

15 **Sec. 9.** RCW 10.77.086 and 2022 c 288 s 4 are each amended to  
16 read as follows:

17 (1) If the defendant is charged with a (~~felony~~) class A felony  
18 or a class B felony as their highest charge and determined to be  
19 incompetent, until he or she has regained the competency necessary to  
20 understand the proceedings against him or her and assist in his or  
21 her own defense, but in any event for a period of no longer than 90  
22 days, the court shall commit the defendant to the custody of the  
23 secretary for inpatient competency restoration, or may alternatively  
24 order the defendant to receive outpatient competency restoration  
25 based on a recommendation from a forensic navigator and input from  
26 the parties.

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

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

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

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

35 (b) If the court orders inpatient competency restoration, the  
36 department shall place the defendant in an appropriate facility of  
37 the department for competency restoration. This may include placement  
38 in an alternative therapeutic unit.

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

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

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

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

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

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

21 (2) If the defendant is charged with a class C felony as their  
22 highest charge and determined to be incompetent, until he or she has  
23 regained the competency necessary to understand the proceedings  
24 against him or her and assist in his or her own defense, but in any  
25 event for a period of no longer than 90 days, the court shall commit  
26 the defendant to the custody of the county for inpatient competency  
27 restoration, or may alternatively order the defendant to receive  
28 outpatient competency restoration from the department based on a  
29 recommendation from a forensic navigator and input from the parties.  
30 In any case where the highest charge is assault in the third degree  
31 where bodily harm has occurred or any class C felony with a domestic  
32 violence enhancement, the prosecutor may petition the court for  
33 inpatient competency restoration to be conducted by the state. The  
34 court will consider the health and safety of the defendant, the risk  
35 to public safety, and the current capacity available at state  
36 facilities in determining whether to order the defendant to the  
37 custody of the department. The department will timely provide data on  
38 state facility capacity at the request of either party or the court.

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

4 (i) Adhere to medications or receive prescribed intramuscular  
5 medication;

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

7 (iii) Comply with urinalysis or breathalyzer monitoring if  
8 needed.

9 (b) If the court orders inpatient competency restoration, the  
10 county shall place the defendant in an appropriate facility of the  
11 county for competency restoration. This may include placement in an  
12 alternative therapeutic unit.

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

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

1 the outpatient competency restoration program, excluding time periods  
2 in which the defendant was absent from the program and all time from  
3 notice of termination of the outpatient competency restoration period  
4 through the defendant's admission to the facility. The county shall  
5 obtain a placement for the defendant within seven days of the notice  
6 of intent to terminate the outpatient competency restoration  
7 placement.

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

22 (ii) The county shall notify the court and parties of the  
23 defendant's admission for inpatient competency restoration before the  
24 close of the next judicial day. The court shall schedule a hearing  
25 within five days to review the conditions of release of the defendant  
26 and anticipated release from treatment and issue appropriate orders.

27 (e) The court may not issue an order for outpatient competency  
28 restoration unless the department certifies that there is an  
29 available appropriate outpatient competency restoration program that  
30 has adequate space for the person at the time the order is issued or  
31 the court places the defendant under the guidance and control of a  
32 professional person identified in the court order.

33 (3) For a defendant whose highest charge is a class C felony, or  
34 a class B felony that is not classified as violent under RCW  
35 9.94A.030, the maximum time allowed for the initial competency  
36 restoration period is 45 days if the defendant is referred for  
37 inpatient competency restoration, or 90 days if the defendant is  
38 referred for outpatient competency restoration, provided that if the  
39 outpatient competency restoration placement is terminated and the  
40 defendant is subsequently admitted to an inpatient facility, the



1 period of inpatient treatment during the first competency restoration  
2 period under this subsection shall not exceed 45 days.

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

12 ~~((4))~~ (5) On or before expiration of the initial competency  
13 restoration period the court shall conduct a hearing to determine  
14 whether the defendant is now competent to stand trial. If the court  
15 finds by a preponderance of the evidence that the defendant is  
16 incompetent to stand trial, the court may order an extension of the  
17 competency restoration period for an additional period of 90 days,  
18 but the court must at the same time set a date for a new hearing to  
19 determine the defendant's competency to stand trial before the  
20 expiration of this second restoration period. The defendant, the  
21 defendant's attorney, and the prosecutor have the right to demand  
22 that the hearing be before a jury. No extension shall be ordered for  
23 a second or third competency restoration period if the defendant's  
24 incompetence has been determined by the secretary to be solely the  
25 result of a developmental disability which is such that competence is  
26 not reasonably likely to be regained during an extension.

27 ~~((5))~~ (6) At the hearing upon the expiration of the second  
28 competency restoration period, or at the end of the first competency  
29 restoration period if the defendant is ineligible for a second or  
30 third competency restoration period under subsection ~~((4))~~ (5) of  
31 this section, if the jury or court finds that the defendant is  
32 incompetent to stand trial, the court shall dismiss the charges  
33 without prejudice and order the defendant to be committed to ~~((a~~  
34 ~~state hospital))~~ the department for defendants whose highest charge  
35 is class A, class B, or assault in the third degree where bodily harm  
36 has occurred or any class C with a domestic violence enhancement or  
37 to the county for defendants whose highest charge is a class C  
38 offense excluding assault 3 where bodily harm has occurred or any  
39 class C offense with a domestic violence enhancement for evaluation  
40 for the purpose of filing a civil commitment petition under chapter

1 71.05 RCW. The evaluation period shall be for up to 120 hours if the  
2 defendant has not undergone competency restoration services or has  
3 engaged in outpatient competency restoration services and up to 72  
4 hours if the defendant engaged in inpatient competency restoration  
5 services starting from admission to the facility, excluding  
6 Saturdays, Sundays, and holidays (~~(, for evaluation for the purpose of~~  
7 ~~filing a civil commitment petition under chapter 71.05 RCW)~~).  
8 However, the court shall not dismiss the charges if the court or jury  
9 finds that: (a) The defendant (i) is a substantial danger to other  
10 persons; or (ii) presents a substantial likelihood of committing  
11 criminal acts jeopardizing public safety or security; and (b) there  
12 is a substantial probability that the defendant will regain  
13 competency within a reasonable period of time. If the court or jury  
14 makes such a finding, the court may extend the period of commitment  
15 for up to an additional six months.

16 ~~((+6))~~ (7) Any period of competency restoration treatment under  
17 this section includes only the time the defendant is actually at the  
18 facility or is actively participating in an outpatient competency  
19 restoration program and is in addition to reasonable time for  
20 transport to or from the facility.

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

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

26 (a) Shall dismiss the proceedings without prejudice and detain  
27 the defendant (~~(for sufficient time to allow the designated crisis~~  
28 ~~responder to evaluate the defendant and consider initial detention~~  
29 ~~proceedings under chapter 71.05 RCW)~~) pursuant to subsection (5) of  
30 this section, unless the prosecutor objects to the dismissal and  
31 provides notice of a motion for an order for competency restoration  
32 treatment, in which case the court shall schedule a hearing within  
33 seven days.

34 (b) At the hearing, the prosecuting attorney must establish that  
35 there is a compelling state interest to order competency restoration  
36 treatment for the defendant. The court may consider prior criminal  
37 history, prior history in treatment, prior history of violence, the  
38 quality and severity of the pending charges, any history that  
39 suggests whether competency restoration treatment is likely to be

1 successful, in addition to the factors listed under RCW 10.77.092. If  
2 the prosecuting attorney proves by a preponderance of the evidence  
3 that there is a compelling state interest in ordering competency  
4 restoration treatment, then the court shall issue an order in  
5 accordance with subsection (2) of this section.

6 (2) If a court finds pursuant to subsection (1)(b) of this  
7 section that there is a compelling state interest in pursuing  
8 competency restoration treatment, the court shall commit the  
9 defendant to the custody of the (~~secretary~~) county for inpatient  
10 competency restoration, or may alternatively order the defendant to  
11 receive outpatient competency restoration from the department based  
12 on a recommendation from a forensic navigator and input from the  
13 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~~) county shall place the defendant in an appropriate  
24 facility of the (~~department~~) county for competency restoration  
25 under subsection (3) of this section.

26 (c) The court shall enter an order for outpatient competency  
27 restoration consistent with the recommendation of the forensic  
28 navigator, unless the court makes a finding that an order for  
29 outpatient competency restoration is inappropriate or inadequate. The  
30 court will consider the opinions of the parties, risks to public  
31 safety, appropriateness of the placement, health and safety of the  
32 defendant, and any other relevant factors in making its decision.

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

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

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

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

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

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

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

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. 11.** A new section is added to chapter 10.77  
29 RCW to read as follows:

30 If the defendant is charged with a misdemeanor within counties  
31 that have outpatient competency restoration, forensic navigator,  
32 forensic projects for assistance in transition from homelessness, and  
33 forensic housing and recovery through peer services programs, and  
34 have had two or more competency evaluations in the preceding 24  
35 months on separate charges/cause numbers and who have not been  
36 referred for a competency evaluation, then:

37 (1) A forensic navigator will meet, interview, and observe the  
38 individual and determine willingness to engage with the forensic  
39 navigator and relevant other staff;

1 (2) The forensic navigator will provide a diversion program plan  
2 that includes a recommendation on diversion options to defense  
3 counsel and the prosecuting attorney;

4 (3) If the parties agree on a recommended option for diversion,  
5 the prosecutor will determine if charges will be dismissed with or  
6 without prejudice;

7 (4) The defendant may file a motion requesting enrollment in a  
8 diversion option if the parties do not agree. The court will hold a  
9 hearing on this motion within 10 days;

10 (a) At the hearing on the motion for diversion options, the court  
11 will consider based upon a preponderance of the evidence whether the  
12 defendant is amendable to diversion, is likely to comply with any  
13 treatment recommendations, and whether they can be safely treated in  
14 the community;

15 (b) If the court determines that diversion is an appropriate  
16 option, the defendant will be enrolled in a diversion program as  
17 recommended by the court and the charge(s) will be dismissed without  
18 prejudice;

19 (5) Individuals whose charges are dismissed and enrolled in a  
20 diversion program will have a forensic navigator assigned to them for  
21 up to six months while engaging in the program;

22 (6) For an individual enrolled in a diversion program whose  
23 charges are dropped without prejudice, the assigned forensic  
24 navigator will provide monthly status updates to the court and the  
25 parties regarding the individual's status in the diversion program.

26 NEW SECTION. **Sec. 12.** Section 8 of this act is necessary for  
27 the immediate preservation of the public peace, health, or safety, or  
28 support of the state government and its existing public institutions,  
29 and takes effect immediately.

30 NEW SECTION. **Sec. 13.** Sections 3, 5, 6, 7, and 10 of this act  
31 take effect July 1, 2024.

32 NEW SECTION. **Sec. 14.** Section 9 of this act takes effect July  
33 1, 2025.

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