

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5440

68th Legislature
2023 Regular Session

Passed by the Senate April 22, 2023
Yeas 43 Nays 6

President of the Senate

Passed by the House April 21, 2023
Yeas 79 Nays 18

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5440** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5440

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

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, 10.77.086, 10.77.088, 10.77.092, 10.77.065,
7 71.05.235, 71.05.280, 71.05.290, 71.05.300, 71.05.425, 71.09.025,
8 71.09.030, and 71.09.060; reenacting and amending RCW 10.77.010;
9 adding new sections to chapter 10.77 RCW; creating new sections;
10 providing an effective date; providing a contingent expiration date;
11 and declaring an emergency.

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

13 NEW SECTION. **Sec. 1.** The legislature finds that defendants
14 referred for services related to competency to stand trial requiring
15 admission into a psychiatric facility are currently facing
16 unprecedented wait times in jail for admission. The situation has
17 been exacerbated by closure of forensic beds and workforce shortages
18 related to COVID-19, and treatment capacity limits related to social
19 distancing requirements. Moreover, a backlog of criminal prosecutions
20 that were held back during the first two years of the pandemic due to
21 capacity limitations in courts, prosecuting attorneys offices, and

1 jails, are now being filed, causing a surge in demand for competency
2 services which exceeds the state's capacity to make a timely
3 response. In partial consequence, as of January 2023, wait times for
4 admission to western state hospital for competency services, directed
5 to be completed within seven days by order of the United States
6 district court for western Washington, have risen to over ten months,
7 while wait times for admission to eastern state hospital for the same
8 services have risen to over five months. The state's forensic bed
9 capacity forecast model indicates that if the state continues to
10 receive competency referrals from local superior, district, and
11 municipal courts at the same volume, the state will rapidly fall
12 farther behind.

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

38 The legislature further finds that despite these investments
39 there is a need for everyone to come together to find solutions to
40 both reduce demand for forensic services and to increase their

1 supply. The state needs collaboration from local governments and
2 other entities to identify any and all facilities that can be used to
3 provide services to patients connected to the forensic system, to
4 reduce the flow of competency referrals coming from municipal,
5 district, and superior courts, and to improve availability and
6 effectiveness of behavioral health services provided outside the
7 criminal justice system.

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

10 As used in this chapter:

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

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

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

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

25 ~~((4))~~ (5) "Community behavioral health agency" has the same
26 meaning as "licensed or certified behavioral health agency" defined
27 in RCW 71.24.025.

28 ~~((5))~~ (6) "Conditional release" means modification of a court-
29 ordered commitment, which may be revoked upon violation of any of its
30 terms.

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

37 ~~((7))~~ (8) "Department" means the state department of social and
38 health services.

1 (~~(8)~~) (9) "Designated crisis responder" has the same meaning as
2 provided in RCW 71.05.020.

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

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

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

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

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

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

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

36 (~~(15)~~) (17) "History of one or more violent acts" means violent
37 acts committed during: (a) The ten-year period of time prior to the
38 filing of criminal charges; plus (b) the amount of time equal to time
39 spent during the ten-year period in a mental health facility or in
40 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)(i) Whenever there is a doubt as to competency, the court on
4 its 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 (ii) Nothing in this subsection (1)(b) is intended to require a
14 waiver of attorney-client privilege. Defense counsel may meet the
15 requirements under this subsection (1)(b) by filing a declaration
16 stating that they have reason to believe that a competency evaluation
17 is necessary, and stating the basis on which the defendant is
18 believed to be incompetent.

19 (c) The signed order of the court shall serve as authority for
20 the evaluator to be given access to all records held by any mental
21 health, medical, long-term services or supports, educational, or
22 correctional facility that relate to the present or past mental,
23 emotional, or physical condition of the defendant. If the court is
24 advised by any party that the defendant may have a developmental
25 disability, the evaluation must be performed by a developmental
26 disabilities professional and the evaluator shall have access to
27 records of the developmental disabilities administration of the
28 department. If the court is advised by any party that the defendant
29 may have dementia or another relevant neurocognitive disorder, the
30 evaluator shall have access to records of the aging and long-term
31 support administration of the department.

32 ~~((e))~~ (d) The evaluator shall assess the defendant in a jail,
33 detention facility, in the community, or in court to determine
34 whether a period of inpatient commitment will be necessary to
35 complete an accurate evaluation. If inpatient commitment is needed,
36 the signed order of the court shall serve as authority for the
37 evaluator to request the jail or detention facility to transport the
38 defendant to a hospital or secure mental health facility for a period
39 of commitment not to exceed fifteen days from the time of admission

1 to the facility. Otherwise, the evaluator shall complete the
2 evaluation.

3 ~~((d))~~ (e) The court may commit the defendant for evaluation to
4 a hospital or secure mental health facility without an assessment if:
5 (i) The defendant is charged with murder in the first or second
6 degree; (ii) the court finds that it is more likely than not that an
7 evaluation in the jail will be inadequate to complete an accurate
8 evaluation; or (iii) the court finds that an evaluation outside the
9 jail setting is necessary for the health, safety, or welfare of the
10 defendant. The court shall not order an initial inpatient evaluation
11 for any purpose other than a competency evaluation.

12 ~~((e))~~ (f) The order shall indicate whether, in the event the
13 defendant is committed to a hospital or secure mental health facility
14 for evaluation, all parties agree to waive the presence of the
15 defendant or to the defendant's remote participation at a subsequent
16 competency hearing or presentation of an agreed order if the
17 recommendation of the evaluator is for continuation of the stay of
18 criminal proceedings, or if the opinion of the evaluator is that the
19 defendant remains incompetent and there is no remaining restoration
20 period, and the hearing is held prior to the expiration of the
21 authorized commitment period.

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

36 (h) If the defendant ordered to be evaluated under this
37 subsection (1) is charged with a serious traffic offense under RCW
38 9.94A.030, or a felony version of a serious traffic offense, the
39 prosecutor may make a motion to modify the defendant's conditions of

1 release to include a condition prohibiting the defendant from driving
2 during the pendency of the competency evaluation period.

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

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

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

15 (b) A diagnosis or description of the current mental status of
16 the defendant;

17 (c) If the defendant (~~suffers from~~) has a mental disease or
18 defect, or has a developmental disability, an opinion as to
19 competency;

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

32 (e) When directed by the court, if an evaluation and report by an
33 expert or professional person has been provided concluding that the
34 defendant lacked the capacity at the time of the offense to form the
35 mental state necessary to commit the charged offense, an opinion as
36 to the capacity of the defendant to have a particular state of mind
37 which is an element of the offense charged;

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

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

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

14 (6) If a finding of the competency evaluation under this section
15 or under RCW 10.77.084 is that the individual is not competent due to
16 an intellectual or developmental disability, dementia, or traumatic
17 brain injury, the evaluator shall notify the department, which shall
18 refer the individual to the developmental disabilities administration
19 or the aging and long-term support administration of the department
20 for review of eligibility for services. The department shall inform
21 the forensic navigator about availability of services.

22 (7) If the expert or professional person appointed to perform a
23 competency evaluation in the community is not able to complete the
24 evaluation after two attempts at scheduling with the defendant, the
25 department shall submit a report to the court and parties and include
26 a date and time for another evaluation which must be at least four
27 weeks later. The court shall provide notice to the defendant of the
28 date and time of the evaluation. If the defendant fails to appear at
29 that appointment, the court shall recall the order for competency
30 evaluation and may issue a warrant for the failure to appear.

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

33 (1)(a) The legislature establishes a performance target of seven
34 days or fewer to extend an offer of admission to a defendant in
35 pretrial custody for inpatient competency evaluation or inpatient
36 competency restoration services, when access to the services is
37 legally authorized.

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

4 (i) To complete a competency evaluation in jail and distribute
5 the evaluation report; and

6 (ii) To extend an offer of admission to a defendant ordered to be
7 committed to (~~a state hospital~~) the department for placement in a
8 facility operated by or contracted by the department following
9 dismissal of charges based on incompetency to stand trial under RCW
10 10.77.086.

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

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

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

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

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

38 (a) Despite a timely request, the department has not received
39 necessary medical information regarding the current medical status of
40 a defendant;

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

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

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

13 (e) Completion of the referral requires additional time to
14 accommodate the availability or participation of counsel, court
15 personnel, interpreters, or the defendant;

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

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

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

30 (6) The department shall:

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

37 (b) Investigate the extent to which patients admitted to a state
38 hospital under this chapter overstay time periods authorized by law
39 and take reasonable steps to limit the time of commitment to
40 authorized periods; and

1 (c) Establish written standards for the productivity of forensic
2 evaluators and utilize these standards to internally review the
3 performance of forensic evaluators.

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

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

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

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

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

30 (2) A forensic navigator must assist the individual to access
31 services related to diversion and community outpatient competency
32 restoration. The forensic navigator must assist the individual,
33 prosecuting attorney, defense attorney, and the court to understand
34 the options available to the individual and be accountable as an
35 officer of the court for faithful execution of the responsibilities
36 outlined in this section.

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

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

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

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

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

13 ~~(d)~~) (e) To provide regular updates to the court and parties of
14 the status of the individual's participation in diversion or
15 outpatient services and be responsive to inquiries by the parties
16 about treatment status;

17 (f) When the individual is ordered to receive community
18 outpatient restoration, to provide services to the individual
19 including:

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

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

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

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

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

30 (vi) Assisting the individual with obtaining prescribed
31 medication and encouraging adherence with prescribed medication;

32 (vii) Assessing the individual for appropriateness for assisted
33 outpatient treatment under chapter 71.05 RCW and coordinating the
34 initiation of an assisted outpatient treatment order if appropriate;

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

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

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

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

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

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

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

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

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

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

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

37 (1)(a) If at any time during the pendency of an action and prior
38 to judgment the court finds, following a report as provided in RCW
39 10.77.060, a defendant is incompetent, the court shall order the

1 proceedings against the defendant be stayed except as provided in
2 subsection (4) of this section. Beginning October 1, 2023, if the
3 defendant is charged with a serious traffic offense under RCW
4 9.94A.030, or a felony version of a serious traffic offense, the
5 court may order the clerk to transmit an order to the department of
6 licensing for revocation of the defendant's driver's license for a
7 period of one year.

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

23 (c) If, following notice and hearing or entry of an agreed order
24 under (b) of this subsection, the court finds that competency has
25 been restored, the court shall lift the stay entered under (a) of
26 this subsection. If the court finds that competency has not been
27 restored, the court shall dismiss the proceedings without prejudice,
28 except that the court may order a further period of competency
29 restoration treatment if it finds that further treatment within the
30 time limits established by RCW 10.77.086 or 10.77.088 is likely to
31 restore competency, and a further period of treatment is allowed
32 under RCW 10.77.086 or 10.77.088.

33 (d) If at any time during the proceeding the court finds,
34 following notice and hearing, a defendant is not likely to regain
35 competency, the court shall dismiss the proceedings without prejudice
36 and refer the defendant for civil commitment evaluation or
37 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
38 10.77.088.

39 (e) Beginning October 1, 2023, if the court issues an order
40 directing revocation of the defendant's driver's license under (a) of

1 this subsection, and the court subsequently finds that the
2 defendant's competency has been restored, the court shall order the
3 clerk to transmit an order to the department of licensing for
4 reinstatement of the defendant's driver's license. The court may
5 direct the clerk to transmit an order reinstating the defendant's
6 driver's license before the end of one year for good cause upon the
7 petition of the defendant.

8 (2) If the defendant is referred for evaluation by a designated
9 crisis responder under this chapter, the designated crisis responder
10 shall provide prompt written notification of the results of the
11 evaluation and whether the person was detained. The notification
12 shall be provided to the court in which the criminal action was
13 pending, the prosecutor, the defense attorney in the criminal action,
14 and the facility that evaluated the defendant for competency.

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

18 (4) A defendant receiving medication for either physical or
19 mental problems shall not be prohibited from standing trial, if the
20 medication either enables the defendant to understand the proceedings
21 against him or her and to assist in his or her own defense, or does
22 not disable him or her from so understanding and assisting in his or
23 her own defense.

24 (5) At or before the conclusion of any commitment period provided
25 for by this section, the facility providing evaluation and treatment
26 shall provide to the court a written report of evaluation which meets
27 the requirements of RCW 10.77.060(3). For defendants charged with a
28 felony, the report following the second competency restoration period
29 or first competency restoration period if the defendant's
30 incompetence is determined to be solely due to a developmental
31 disability or the evaluator concludes that the defendant is not
32 likely to regain competency must include an assessment of the
33 defendant's future dangerousness which is evidence-based regarding
34 predictive validity.

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

37 (1) If the defendant is charged with a felony and determined to
38 be incompetent, until he or she has regained the competency necessary
39 to understand the proceedings against him or her and assist in his or

1 her own defense, but in any event for a period of no longer than 90
2 days, the court shall commit the defendant to the custody of the
3 secretary for inpatient competency restoration, or may alternatively
4 order the defendant to receive outpatient competency restoration
5 based on a recommendation from a forensic navigator and input from
6 the parties.

7 (a) To be eligible for an order for outpatient competency
8 restoration, a defendant must be clinically appropriate and be
9 willing to:

10 (i) Adhere to medications or receive prescribed intramuscular
11 medication;

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

13 (iii) Comply with urinalysis or breathalyzer monitoring if
14 needed.

15 (b) If the court orders inpatient competency restoration, the
16 department shall place the defendant in an appropriate facility of
17 the department for competency restoration.

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

31 (d) If a defendant fails to comply with the restrictions of the
32 outpatient restoration program such that restoration is no longer
33 appropriate in that setting or the defendant is no longer clinically
34 appropriate for outpatient competency restoration, the director of
35 the outpatient competency restoration program shall notify the
36 authority and the department of the need to terminate the outpatient
37 competency restoration placement and intent to request placement for
38 the defendant in an appropriate facility of the department for
39 inpatient competency restoration. The outpatient competency
40 restoration program shall coordinate with the authority, the

1 department, and any law enforcement personnel under (d)(i) of this
2 subsection to ensure that the time period between termination and
3 admission into the inpatient facility is as minimal as possible. The
4 time period for inpatient competency restoration shall be reduced by
5 the time period spent in active treatment within the outpatient
6 competency restoration program, excluding time periods in which the
7 defendant was absent from the program and all time from notice of
8 termination of the outpatient competency restoration period through
9 the defendant's admission to the facility. The department shall
10 obtain a placement for the defendant within seven days of the notice
11 of intent to terminate the outpatient competency restoration
12 placement.

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

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

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

38 (2) For a defendant whose highest charge is a class C felony, or
39 a class B felony that is not classified as violent under RCW
40 9.94A.030, the maximum time allowed for the initial competency

1 restoration period is 45 days if the defendant is referred for
2 inpatient competency restoration, or 90 days if the defendant is
3 referred for outpatient competency restoration, provided that if the
4 outpatient competency restoration placement is terminated and the
5 defendant is subsequently admitted to an inpatient facility, the
6 period of inpatient treatment during the first competency restoration
7 period under this subsection shall not exceed 45 days.

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

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

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

1 restoration services or has engaged in outpatient competency
2 restoration services and up to 72 hours if the defendant engaged in
3 inpatient competency restoration services starting from admission to
4 the facility, excluding Saturdays, Sundays, and holidays, for
5 evaluation for the purpose of filing a civil commitment petition
6 under chapter 71.05 RCW. (~~However, the~~) If at the time the order to
7 dismiss the charges without prejudice is entered by the court the
8 defendant is already in a facility operated or contracted by the
9 department, the 72-hour or 120-hour period shall instead begin upon
10 department receipt of the court order.

11 (b) The court shall not dismiss the charges if the court or jury
12 finds that: (~~(a)~~) (i) The defendant (~~(i)~~) (A) is a substantial
13 danger to other persons; or (~~(ii)~~) (B) presents a substantial
14 likelihood of committing criminal acts jeopardizing public safety or
15 security; and (~~(b)~~) (ii) there is a substantial probability that
16 the defendant will regain competency within a reasonable period of
17 time. If the court or jury makes such a finding, the court may extend
18 the period of commitment for up to an additional six months.

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

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

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

36 (b) For a defendant who is determined to be incompetent and whose
37 highest charge is a class C felony other than assault in the third
38 degree under RCW 9A.36.031(1) (d) or (f), felony physical control of
39 a vehicle under RCW 46.61.504(6), felony hit and run resulting in

1 injury under RCW 46.52.020(4)(b), a hate crime offense under RCW
2 9A.36.080, a class C felony with a domestic violence designation, a
3 class C felony sex offense as defined in RCW 9.94A.030, or a class C
4 felony with a sexual motivation allegation, the court shall first
5 consider all available and appropriate alternatives to inpatient
6 competency restoration. The court shall dismiss the proceedings
7 without prejudice upon agreement of the parties if the forensic
8 navigator has found an appropriate and available diversion program
9 willing to accept the defendant.

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

13 (i) Adhere to medications or receive prescribed intramuscular
14 medication;

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

16 (iii) Comply with urinalysis or breathalyzer monitoring if
17 needed.

18 (b) If the court orders inpatient competency restoration, the
19 department shall place the defendant in an appropriate facility of
20 the department for competency restoration.

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

34 (d) If a defendant fails to comply with the restrictions of the
35 outpatient restoration program such that restoration is no longer
36 appropriate in that setting or the defendant is no longer clinically
37 appropriate for outpatient competency restoration, the director of
38 the outpatient competency restoration program shall notify the
39 authority and the department of the need to terminate the outpatient
40 competency restoration placement and intent to request placement for

1 the defendant in an appropriate facility of the department for
2 inpatient competency restoration. The outpatient competency
3 restoration program shall coordinate with the authority, the
4 department, and any law enforcement personnel under (d)(i) of this
5 subsection to ensure that the time period between termination and
6 admission into the inpatient facility is as minimal as possible. The
7 time period for inpatient competency restoration shall be reduced by
8 the time period spent in active treatment within the outpatient
9 competency restoration program, excluding time periods in which the
10 defendant was absent from the program and all time from notice of
11 termination of the outpatient competency restoration period through
12 the defendant's admission to the facility. The department shall
13 obtain a placement for the defendant within seven days of the notice
14 of intent to terminate the outpatient competency restoration
15 placement.

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

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

35 (e) The court may not issue an order for outpatient competency
36 restoration unless the department certifies that there is an
37 available appropriate outpatient competency restoration program that
38 has adequate space for the person at the time the order is issued or
39 the court places the defendant under the guidance and control of a
40 professional person identified in the court order.

1 ~~((2))~~ (3) For a defendant whose highest charge is a class C
2 felony, or a class B felony that is not classified as violent under
3 RCW 9.94A.030, the maximum time allowed for the initial competency
4 restoration period is 45 days if the defendant is referred for
5 inpatient competency restoration, or 90 days if the defendant is
6 referred for outpatient competency restoration, provided that if the
7 outpatient competency restoration placement is terminated and the
8 defendant is subsequently admitted to an inpatient facility, the
9 period of inpatient treatment during the first competency restoration
10 period under this subsection shall not exceed 45 days.

11 ~~((3))~~ (4) When any defendant whose highest charge is a class C
12 felony other than assault in the third degree under RCW 9A.36.031(1)
13 (d) or (f), felony physical control of a vehicle under RCW
14 46.61.504(6), felony hit and run resulting in injury under RCW
15 46.52.020(4)(b), a hate crime offense under RCW 9A.36.080, a class C
16 felony with a domestic violence designation, a class C felony sex
17 offense as defined in RCW 9.94A.030, or a class C felony with a
18 sexual motivation allegation is admitted for inpatient competency
19 restoration with an accompanying court order for involuntary
20 medication under RCW 10.77.092, and the defendant is found not
21 competent to stand trial following that period of competency
22 restoration, the court shall dismiss the charges pursuant to
23 subsection (7) of this section.

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

32 ~~((4))~~ (6) On or before expiration of the initial competency
33 restoration period the court shall conduct a hearing to determine
34 whether the defendant is now competent to stand trial. If the court
35 finds by a preponderance of the evidence that the defendant is
36 incompetent to stand trial, the court may order an extension of the
37 competency restoration period for an additional period of 90 days,
38 but the court must at the same time set a date for a new hearing to
39 determine the defendant's competency to stand trial before the
40 expiration of this second restoration period. The defendant, the

1 defendant's attorney, and the prosecutor have the right to demand
2 that the hearing be before a jury. No extension shall be ordered for
3 a second or third competency restoration period if the defendant is
4 ineligible for a subsequent competency restoration period under
5 subsection (4) of this section or the defendant's incompetence has
6 been determined by the secretary to be solely the result of ((a)) an
7 intellectual or developmental disability, dementia, or traumatic
8 brain injury which is such that competence is not reasonably likely
9 to be regained during an extension.

10 ((~~(5)~~ ~~A~~)) (7)(a) Except as provided in (b) of this subsection,
11 at the hearing upon the expiration of the second competency
12 restoration period, or at the end of the first competency restoration
13 period if the defendant is ineligible for a second or third
14 competency restoration period under subsection ((~~4~~)) (3) or (6) of
15 this section, if the jury or court finds that the defendant is
16 incompetent to stand trial, the court shall dismiss the charges
17 without prejudice and order the defendant to be committed to ((a
18 state hospital)) the department for placement in a facility operated
19 or contracted by the department for up to 120 hours if the defendant
20 has not undergone competency restoration services or has engaged in
21 outpatient competency restoration services, and up to 72 hours if the
22 defendant engaged in inpatient competency restoration services
23 starting from admission to the facility, excluding Saturdays,
24 Sundays, and holidays, for evaluation for the purpose of filing a
25 civil commitment petition under chapter 71.05 RCW. ((However, the))
26 If at the time the order to dismiss the charges without prejudice is
27 entered by the court the defendant is already in a facility operated
28 or contracted by the department, the 72-hour or 120-hour period shall
29 instead begin upon department receipt of the court order.

30 (b) The court shall not dismiss the charges if the defendant is
31 eligible for a second or third competency restoration period under
32 subsection (6) of this section and the court or jury finds that:
33 ((~~a~~)) (i) The defendant ((~~i~~)) (A) is a substantial danger to
34 other persons; or ((~~ii~~)) (B) presents a substantial likelihood of
35 committing criminal acts jeopardizing public safety or security; and
36 ((~~b~~)) (ii) there is a substantial probability that the defendant
37 will regain competency within a reasonable period of time. If the
38 court or jury makes such a finding, the court may extend the period
39 of commitment for up to an additional six months.

1 ~~((+6))~~ (8) Any period of competency restoration treatment under
2 this section includes only the time the defendant is actually at the
3 facility or is actively participating in an outpatient competency
4 restoration program and is in addition to reasonable time for
5 transport to or from the facility.

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

8 (1) If the defendant is charged with a nonfelony crime which is a
9 serious offense as identified in RCW 10.77.092 and found by the court
10 to be not competent, the court shall first consider all available and
11 appropriate alternatives to inpatient competency restoration. If the
12 parties agree that there is an appropriate diversion program
13 available to accept the defendant, the court shall dismiss the
14 proceedings without prejudice and refer the defendant to the
15 recommended diversion program. If the parties do not agree that there
16 is an appropriate diversion program available to accept the
17 defendant, then the court:

18 (a) Shall dismiss the proceedings without prejudice and detain
19 the defendant (~~for sufficient time to allow the designated crisis~~
20 ~~responder to evaluate the defendant and consider initial detention~~
21 ~~proceedings under chapter 71.05 RCW)) pursuant to subsection (6) of
22 this section, unless the prosecutor objects to the dismissal and
23 provides notice of a motion for an order for competency restoration
24 treatment, in which case the court shall schedule a hearing within
25 seven days.~~

26 (b) At the hearing, the prosecuting attorney must establish that
27 there is a compelling state interest to order competency restoration
28 treatment for the defendant. The court may consider prior criminal
29 history, prior history in treatment, prior history of violence, the
30 quality and severity of the pending charges, any history that
31 suggests whether competency restoration treatment is likely to be
32 successful, in addition to the factors listed under RCW 10.77.092. If
33 the defendant is subject to an order under chapter 71.05 RCW or
34 proceedings under chapter 71.05 RCW have been initiated, there is a
35 rebuttable presumption that there is no compelling state interest in
36 ordering competency restoration treatment. If the prosecuting
37 attorney proves by a preponderance of the evidence that there is a
38 compelling state interest in ordering competency restoration

1 treatment, then the court shall issue an order in accordance with
2 subsection (2) of this section.

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

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

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

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

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

37 (ii) The department shall notify the court and parties of the
38 defendant's admission for inpatient competency restoration before the
39 close of the next judicial day. The court shall schedule a hearing

1 within five days to review the conditions of release of the defendant
2 and anticipated release from treatment and issue appropriate orders.

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

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

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

20 (4) Beginning October 1, 2023, if the defendant is charged with a
21 serious traffic offense under RCW 9.94A.030, the court may order the
22 clerk to transmit an order to the department of licensing for
23 revocation of the defendant's driver's license for a period of one
24 year. The court shall direct the clerk to transmit an order to the
25 department of licensing reinstating the defendant's driver's license
26 if the defendant is subsequently restored to competency, and may do
27 so at any time before the end of one year for good cause upon the
28 petition of the defendant.

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

35 ~~((5))~~ (6)(a) If the proceedings are dismissed under RCW
36 10.77.084 and the defendant was on conditional release at the time of
37 dismissal, the court shall order the designated crisis responder
38 within that county to evaluate the defendant pursuant to chapter
39 71.05 RCW. The evaluation may be conducted in any location chosen by
40 the professional.

1 (b) If the defendant was in custody and not on conditional
2 release at the time of dismissal, the defendant shall be detained and
3 sent to an evaluation and treatment facility for up to 120 hours if
4 the defendant has not undergone competency restoration services or
5 has engaged in outpatient competency restoration services and up to
6 72 hours if the defendant engaged in inpatient competency restoration
7 services, excluding Saturdays, Sundays, and holidays, for evaluation
8 for purposes of filing a petition under chapter 71.05 RCW. The 120-
9 hour or 72-hour period shall commence upon the next nonholiday
10 weekday following the court order and shall run to the end of the
11 last nonholiday weekday within the 120-hour or 72-hour period.

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

21 ~~((+7))~~ (8) If at any time the court dismisses charges under
22 subsections (1) through ~~((+6))~~ (7) of this section, the court shall
23 make a finding as to whether the defendant has a history of one or
24 more violent acts. If the court so finds, the defendant is barred
25 from the possession of firearms until a court restores his or her
26 right to possess a firearm under RCW 9.41.047. The court shall state
27 to the defendant and provide written notice that the defendant is
28 barred from the possession of firearms and that the prohibition
29 remains in effect until a court restores his or her right to possess
30 a firearm under RCW 9.41.047.

31 ~~((+8))~~ (9) Any period of competency restoration treatment under
32 this section includes only the time the defendant is actually at the
33 facility or is actively participating in an outpatient competency
34 restoration program and is in addition to reasonable time for
35 transport to or from the facility.

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

38 (1) In counties with a forensic navigator program, a forensic
39 navigator shall:

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

14 (b) Provide a diversion program plan to the parties in each case
15 that includes a recommendation for a diversion program to defense
16 counsel and the prosecuting attorney. Services under a diversion
17 program may include a referral for assisted outpatient treatment
18 under chapter 71.05 RCW.

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

22 (3)(a) For defendants charged with a nonfelony, the court may
23 order the defendant to a diversion program if recommended by the
24 forensic navigator. Upon engagement with the diversion program, the
25 defense may move to dismiss the charges without prejudice. The court
26 shall hold a hearing on this motion within 10 days. The court shall
27 grant the defense motion if it finds by a preponderance of the
28 evidence that the defendant is amenable to the services described in
29 the diversion program and can safely receive services in the
30 community.

31 (b) For defendants charged with a class C felony other than
32 assault in the third degree under RCW 9A.36.031(1) (d) or (f), felony
33 physical control of a vehicle under RCW 46.61.504(6), felony hit and
34 run resulting in injury under RCW 46.52.020(4)(b), a hate crime
35 offense under RCW 9A.36.080, a class C felony with a domestic
36 violence designation, a class C felony sex offense as defined in RCW
37 9.94A.030, or a class C felony with a sexual motivation allegation,
38 the defense may move for dismissal of the charges without prejudice
39 if the defendant is currently subject to a civil commitment order
40 under chapter 71.05 RCW. The court shall grant the defense motion

1 upon confirmation of an available treatment plan under chapter 71.05
2 RCW.

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

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

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

12 (1) For purposes of determining whether a court may authorize
13 involuntary medication for the purpose of competency restoration
14 pursuant to RCW 10.77.084 and for maintaining the level of
15 restoration in the jail following the restoration period, a pending
16 charge involving any one or more of the following crimes is a serious
17 offense per se in the context of competency restoration:

18 (a) Any violent offense, sex offense, serious traffic offense,
19 and most serious offense, as those terms are defined in RCW
20 9.94A.030;

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

23 (c) Any offense contained in chapter 9.41 RCW (firearms and
24 dangerous weapons);

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

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

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

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

32 (2) Any time a petition is filed seeking a court order
33 authorizing the involuntary medication for purposes of competency
34 restoration pursuant to RCW 10.77.084, the petition must also seek
35 authorization to continue involuntary medication for purposes of
36 maintaining the level of restoration in the jail or juvenile
37 detention facility following the restoration period.

38 (3)(a) In a particular case, a court may determine that a pending
39 charge not otherwise defined as serious by state or federal law or by

1 a city or county ordinance is, nevertheless, a serious offense within
2 the context of competency restoration treatment when the conduct in
3 the charged offense falls within the standards established in (b) of
4 this subsection.

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

9 (i) The charge includes an allegation that the defendant actually
10 inflicted bodily or emotional harm on another person or that the
11 defendant created a reasonable apprehension of bodily or emotional
12 harm to another;

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

15 (iii) The number and nature of related charges pending against
16 the defendant;

17 (iv) The length of potential confinement if the defendant is
18 convicted; and

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

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

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

32 (a) The substitution is for a generic version of a name brand
33 drug and the generic version is chemically identical to the name
34 brand drug; or

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

38 (2) This section includes but is not limited to situations in
39 which the individual returns to a jail or juvenile detention facility

1 directly after undergoing treatment at a state hospital, behavioral
2 health agency, outpatient competency restoration program, or prison.

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

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

9 (1) Following a competency evaluation under RCW 10.77.060,
10 individuals who are found not competent to stand trial and not
11 restorable due to an intellectual or developmental disability,
12 dementia, or traumatic brain injury, shall not be referred for
13 competency restoration services.

14 (2) The department shall develop a process for connecting
15 individuals who have been found not competent to stand trial due to
16 an intellectual or developmental disability, dementia, or traumatic
17 brain injury to available wraparound services and supports in
18 community-based settings, which may include residential supports. The
19 process shall include provisions for individuals who are current
20 clients of the department's developmental disabilities administration
21 or aging and long-term support administration and for individuals who
22 are not current clients of the department.

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

26 (i) Coordinate with the individual's services providers to
27 determine if the individual can return to the same or like services,
28 or determine appropriate new community-based services. This shall
29 include updating the individual's service plan and identifying and
30 coordinating potential funding for any additional supports to
31 stabilize the individual in community-based settings funded by the
32 developmental disabilities administration or aging and long-term
33 support administration so that the individual does not lose existing
34 services, including submitting any exceptions to rule for additional
35 services;

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

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

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

7 (i) Conduct an eligibility determination for services and send
8 referral packets to service providers for all relevant community-
9 based services for which the individual is eligible. This process
10 must include identifying and coordinating funding for any additional
11 supports that are needed to stabilize the individual in any
12 community-based setting funded by the developmental disabilities
13 administration or aging and long-term support administration,
14 including submitting any necessary exceptions to rule for additional
15 services; and

16 (ii) Connect with the individual's assigned forensic navigator
17 and determine if the individual is eligible for any diversion,
18 supportive housing, or case management programs as a *Trueblood* class
19 member, if additional specialized services are available to
20 supplement diversion program services, and assist the individual to
21 access these services.

22 (3) The department shall offer to transition the individual in
23 services either directly from the jail or as soon thereafter as may
24 be practicable, without maintaining the individual at an inpatient
25 facility for longer than is clinically necessary. Nothing in this
26 subsection prohibits the department from returning the individual to
27 their home or to another less restrictive setting if such setting is
28 appropriate, which may include provision of supportive services to
29 help the person maintain stability. The individual is not required to
30 accept developmental disabilities administration, aging and long-term
31 support administration, or other diversionary services as a condition
32 of having the individual's criminal case dismissed without prejudice,
33 provided the individual meets the criteria of subsection (1) of this
34 section.

35 (4) Subject to the availability of funds appropriated for this
36 specific purpose, the department shall develop a program for
37 individuals who have been involved with the criminal justice system
38 and who have been found under RCW 10.77.084 as incompetent to stand
39 trial due to an intellectual or developmental disability, traumatic
40 brain injury, or dementia and who do not meet criteria under other

1 programs in this section. The program must involve wraparound
2 services and housing supports appropriate to the needs of the
3 individual. It is sufficient to meet the criteria for participation
4 in this program if the individual has recently been the subject of
5 criminal charges and was found incompetent to stand trial due to an
6 intellectual or developmental disability, traumatic brain injury, or
7 dementia.

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

30 NEW SECTION. **Sec. 15.** Subject to the availability of funds
31 appropriated for this specific purpose, the health care authority
32 shall require the programs it contracts with to increase compensation
33 for staff in outpatient competency restoration programs to provide
34 compensation at competitive levels to improve recruitment and allow
35 for the full implementation of outpatient competency restoration
36 programs.

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

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

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

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

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

1 NEW SECTION. **Sec. 19.** A new section is added to chapter 10.77

2 RCW to read as follows:

3 (1) The department shall coordinate with cities, counties,
4 hospitals, and other public and private entities to identify
5 locations that may be commissioned or renovated for use in treating
6 clients committed to the department for competency evaluation,
7 competency restoration, civil conversion, or treatment following
8 acquittal by reason of insanity.

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

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

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

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

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

1 medication and an involuntary medication order by the court has not
2 been entered.

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

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

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

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

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

29 (4) A facility conducting a civil commitment evaluation under RCW
30 10.77.086(~~((4))~~) (7) or 10.77.088(~~((1)(e)(ii))~~) (6)(b) that makes a
31 determination to release the person instead of filing a civil
32 commitment petition must provide written notice to the prosecutor and
33 defense attorney at least twenty-four hours prior to release. The
34 notice may be given by email, facsimile, or other means reasonably
35 likely to communicate the information immediately.

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

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

3 (1) If an individual is referred to a designated crisis responder
4 under RCW 10.77.088(~~((2)(d)(i))~~) (6)(a), the designated crisis
5 responder shall examine the individual within forty-eight hours. If
6 the designated crisis responder determines it is not appropriate to
7 detain the individual or petition for a ninety-day less restrictive
8 alternative under RCW 71.05.230(4), that decision shall be
9 immediately presented to the superior court for hearing. The court
10 shall hold a hearing to consider the decision of the designated
11 crisis responder not later than the next judicial day. At the hearing
12 the superior court shall review the determination of the designated
13 crisis responder and determine whether an order should be entered
14 requiring the person to be evaluated at an evaluation and treatment
15 facility. No person referred to an evaluation and treatment facility
16 may be held at the facility longer than one hundred twenty hours.

17 (2) If an individual is placed in an evaluation and treatment
18 facility under RCW 10.77.088(~~((2)(d)(ii))~~) (6)(b), a professional
19 person shall evaluate the individual for purposes of determining
20 whether to file a ninety-day inpatient or outpatient petition under
21 this chapter. Before expiration of the one hundred twenty hour
22 evaluation period authorized under RCW 10.77.088(~~((2)(d)(ii))~~)
23 (6)(b), the professional person shall file a petition or, if the
24 recommendation of the professional person is to release the
25 individual, present his or her recommendation to the superior court
26 of the county in which the criminal charge was dismissed. The
27 superior court shall review the recommendation not later than forty-
28 eight hours, excluding Saturdays, Sundays, and holidays, after the
29 recommendation is presented. If the court rejects the recommendation
30 to unconditionally release the individual, the court may order the
31 individual detained at a designated evaluation and treatment facility
32 for not more than a one hundred twenty hour evaluation and treatment
33 period. If the evaluation and treatment facility files a ninety-day
34 petition within the one hundred twenty hour period, the clerk shall
35 set a hearing after the day of filing consistent with RCW 71.05.300.
36 Upon the individual's first appearance in court after a petition has
37 been filed, proceedings under RCW 71.05.310 and 71.05.320 shall
38 commence. For an individual subject to this subsection, the
39 professional person may directly file a petition for ninety-day
40 inpatient or outpatient treatment and no petition for initial

1 detention or fourteen-day detention is required before such a
2 petition may be filed.

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

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

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

14 (1) Such person after having been taken into custody for
15 evaluation and treatment has threatened, attempted, or inflicted: (a)
16 Physical harm upon the person of another or himself or herself, or
17 substantial damage upon the property of another, and (b) as a result
18 of a behavioral health disorder presents a likelihood of serious
19 harm; or

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

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

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

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

38 (4) Such person is gravely disabled.

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

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

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

12 (A) One physician, physician assistant, or psychiatric advanced
13 registered nurse practitioner; and

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

16 (ii) If the petition is for substance use disorder treatment, the
17 petition may be signed by a substance use disorder professional
18 instead of a mental health professional and by an advanced registered
19 nurse practitioner instead of a psychiatric advanced registered nurse
20 practitioner.

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

29 (3) If a person has been determined to be incompetent pursuant to
30 RCW 10.77.086(~~((4))~~) (7), then the professional person in charge of
31 the treatment facility or his or her professional designee or the
32 designated crisis responder may directly file a petition for 180-day
33 treatment under RCW 71.05.280(3), or for 90-day treatment under RCW
34 71.05.280 (1), (2), or (4). No petition for initial detention or 14-
35 day detention is required before such a petition may be filed.

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

38 (1) The petition for ninety day treatment shall be filed with the
39 clerk of the superior court at least three days before expiration of

1 the fourteen-day period of intensive treatment. The clerk shall set a
2 trial setting date as provided in RCW 71.05.310 on the next judicial
3 day after the date of filing the petition and notify the designated
4 crisis responder. The designated crisis responder shall immediately
5 notify the person detained, his or her attorney, if any, and his or
6 her guardian or conservator, if any, the prosecuting attorney, and
7 the behavioral health administrative services organization
8 administrator, and provide a copy of the petition to such persons as
9 soon as possible. The behavioral health administrative services
10 organization administrator or designee may review the petition and
11 may appear and testify at the full hearing on the petition.

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

24 (3) The court may, if requested, also appoint a professional
25 person as defined in RCW 71.05.020 to seek less restrictive
26 alternative courses of treatment and to testify on behalf of the
27 detained person. In the case of a person with a developmental
28 disability who has been determined to be incompetent pursuant to RCW
29 10.77.086(~~(4)~~) (7), the appointed professional person under this
30 section shall be a developmental disabilities professional.

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

33 (1)(a) Except as provided in subsection (2) of this section, at
34 the earliest possible date, and in no event later than thirty days
35 before conditional release, final release, authorized leave under RCW
36 71.05.325(2), or transfer to a facility other than a state mental
37 hospital, the superintendent shall send written notice of conditional
38 release, release, authorized leave, or transfer of a person committed
39 under RCW 71.05.280(3) or 71.05.320(4)(c) following dismissal of a

1 sex, violent, or felony harassment offense pursuant to RCW
2 10.77.086(~~(4)~~) (7) to the following:

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

5 (ii) The sheriff of the county in which the person will reside;
6 and

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

9 (b) The same notice as required by (a) of this subsection shall
10 be sent to the following, if such notice has been requested in
11 writing about a specific person committed under RCW 71.05.280(3) or
12 71.05.320(4)(c) following dismissal of a sex, violent, or felony
13 harassment offense pursuant to RCW 10.77.086(~~(4)~~) (7):

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

18 (ii) Any witnesses who testified against the person in any court
19 proceedings;

20 (iii) Any person specified in writing by the prosecuting
21 attorney. Information regarding victims, next of kin, or witnesses
22 requesting the notice, information regarding any other person
23 specified in writing by the prosecuting attorney to receive the
24 notice, and the notice are confidential and shall not be available to
25 the person committed under this chapter; and

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

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

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

34 (2) If a person committed under RCW 71.05.280(3) or
35 71.05.320(4)(c) following dismissal of a sex, violent, or felony
36 harassment offense pursuant to RCW 10.77.086(~~(4)~~) (7) escapes, the
37 superintendent shall immediately notify, by the most reasonable and
38 expedient means available, the chief of police of the city and the
39 sheriff of the county in which the person escaped and in which the
40 person resided immediately before the person's arrest and the

1 prosecuting attorney of the county in which the criminal charges
2 against the committed person were dismissed. If previously requested,
3 the superintendent shall also notify the witnesses and the victim of
4 the sex, violent, or felony harassment offense that was dismissed
5 pursuant to RCW 10.77.086(~~((4))~~) (7) preceding commitment under RCW
6 71.05.280(3) or 71.05.320(4) or the victim's next of kin if the crime
7 was a homicide. In addition, the secretary shall also notify
8 appropriate parties pursuant to RCW 70.02.230(2)(o). If the person is
9 recaptured, the superintendent shall send notice to the persons
10 designated in this subsection as soon as possible but in no event
11 later than two working days after the department of social and health
12 services learns of such recapture.

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

16 (4) The superintendent shall send the notices required by this
17 chapter to the last address provided to the department of social and
18 health services by the requesting party. The requesting party shall
19 furnish the department of social and health services with a current
20 address.

21 (5) For purposes of this section the following terms have the
22 following meanings:

23 (a) "Violent offense" means a violent offense under RCW
24 9.94A.030;

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

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

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

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

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

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

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

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

6 (iv) Release of a person who has been found not guilty by reason
7 of insanity of a sexually violent offense pursuant to RCW
8 10.77.020(3).

9 (b) The agency shall provide the prosecuting agency with all
10 relevant information including but not limited to the following
11 information:

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

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

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

19 (iv) A current record of all prior arrests and convictions, and
20 full police case reports relating to those arrests and convictions;
21 and

22 (v) A current mental health evaluation or mental health records
23 review.

24 (c) The prosecuting agency has the authority, consistent with RCW
25 72.09.345(~~(+3)~~) (4), to obtain all records relating to the person if
26 the prosecuting agency deems such records are necessary to fulfill
27 its duties under this chapter. The prosecuting agency may only
28 disclose such records in the course of performing its duties pursuant
29 to this chapter, unless otherwise authorized by law.

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

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

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

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

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

24 (2) The petition may be filed by:

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

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

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

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

34 (b) The attorney general, if requested by the county prosecuting
35 attorney identified in (a) of this subsection. If the county
36 prosecuting attorney requests that the attorney general file and
37 prosecute a case under this chapter, then the county shall charge the
38 attorney general only the fees, including filing and jury fees, that

1 would be charged and paid by the county prosecuting attorney, if the
2 county prosecuting attorney retained the case.

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

5 (1) The court or jury shall determine whether, beyond a
6 reasonable doubt, the person is a sexually violent predator. In
7 determining whether or not the person would be likely to engage in
8 predatory acts of sexual violence if not confined in a secure
9 facility, the fact finder may consider only placement conditions and
10 voluntary treatment options that would exist for the person if
11 unconditionally released from detention on the sexually violent
12 predator petition. The community protection program under RCW
13 71A.12.230 may not be considered as a placement condition or
14 treatment option available to the person if unconditionally released
15 from detention on a sexually violent predator petition. When the
16 determination is made by a jury, the verdict must be unanimous.

17 If, on the date that the petition is filed, the person was living
18 in the community after release from custody, the state must also
19 prove beyond a reasonable doubt that the person had committed a
20 recent overt act. If the state alleges that the prior sexually
21 violent offense that forms the basis for the petition for commitment
22 was an act that was sexually motivated as provided in RCW
23 71.09.020(~~((15)(e))~~) (18)(c), the state must prove beyond a
24 reasonable doubt that the alleged sexually violent act was sexually
25 motivated as defined in RCW 9.94A.030.

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

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

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

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

35 (3) Except as otherwise provided in this chapter, the state shall
36 comply with RCW 10.77.220 while confining the person. During all
37 court proceedings where the person is present, the person shall be
38 detained in a secure facility. If the proceedings last more than one
39 day, the person may be held in the county jail for the duration of
40 the proceedings, except the person may be returned to the

1 department's custody on weekends and court holidays if the court
2 deems such a transfer feasible. The county shall be entitled to
3 reimbursement for the cost of housing and transporting the person
4 pursuant to rules adopted by the secretary. The department shall not
5 place the person, even temporarily, in a facility on the grounds of
6 any state mental facility or regional habilitation center because
7 these institutions are insufficiently secure for this population.

8 (4) A court has jurisdiction to order a less restrictive
9 alternative placement only after a hearing ordered pursuant to RCW
10 71.09.090 following initial commitment under this section and in
11 accord with the provisions of this chapter.

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

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

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

20 NEW SECTION. **Sec. 32.** If specific funding for the purposes of
21 this act, referencing this act by bill or chapter number, is not
22 provided by June 30, 2023, in the omnibus appropriations act, this
23 act is null and void.

--- END ---