

RCW 10.77.060 Plea of not guilty due to insanity—Doubt as to competency—Evaluation—Bail—Report—Competency to stand trial status check. (1) (a) Whenever a defendant has pleaded not guilty by reason of insanity, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

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

(ii) Nothing in this subsection (1) (b) is intended to require a waiver of attorney-client privilege. Defense counsel may meet the requirements under this subsection (1) (b) by filing a declaration stating that they have reason to believe that a competency evaluation is necessary, and stating the basis on which the defendant is believed to be incompetent.

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

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

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

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

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

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

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

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

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

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

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

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, and an evaluation and report by an expert or professional person has been provided concluding that the defendant was criminally insane at the time of the alleged offense, an opinion as to the defendant's sanity at the time of the act, and an opinion as to whether the defendant presents a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, provided that no opinion shall be

rendered under this subsection (3)(d) unless the evaluator or court determines that the defendant is competent to stand trial;

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

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

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

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

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

(7) If the expert or professional person appointed to perform a competency evaluation in the community is not able to complete the evaluation after two attempts at scheduling with the defendant, the department shall submit a report to the court and parties and include a date and time for another evaluation which must be at least four weeks later. The court shall provide notice to the defendant of the date and time of the evaluation. If the defendant fails to appear at that appointment, the court shall recall the order for competency evaluation and may issue a warrant for the failure to appear. [2023 c 453 § 3; 2022 c 288 § 2; 2021 c 263 § 5; 2016 sp.s. c 29 § 408; 2012 c 256 § 3; 2004 c 9 § 1; 2000 c 74 § 1; 1998 c 297 § 34; 1989 c 420 § 4; 1974 ex.s. c 198 § 6; 1973 1st ex.s. c 117 § 6.]

Findings—2023 c 453: "The legislature finds that defendants referred for services related to competency to stand trial requiring admission into a psychiatric facility are currently facing unprecedented wait times in jail for admission. The situation has been exacerbated by closure of forensic beds and workforce shortages related to COVID-19, and treatment capacity limits related to social distancing requirements. Moreover, a backlog of criminal prosecutions that were held back during the first two years of the pandemic due to capacity limitations in courts, prosecuting attorneys offices, and jails, are now being filed, causing a surge in demand for competency services which exceeds the state's capacity to make a timely response. In partial consequence, as of January 2023, wait times for admission

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

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

The legislature further finds that despite these investments there is a need for everyone to come together to find solutions to both reduce demand for forensic services and to increase their supply. The state needs collaboration from local governments and other entities to identify any and all facilities that can be used to provide services to patients connected to the forensic system, to reduce the flow of competency referrals coming from municipal, district, and superior courts, and to improve availability and effectiveness of behavioral health services provided outside the criminal justice system." [2023 c 453 § 1.]

Application—2021 c 263: See note following RCW 10.77.150.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

Severability—2000 c 74: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 74 § 8.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.