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**SUBSTITUTE SENATE BILL 5114**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senator Hargrove)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to streamlining competency evaluation and  
2 competency restoration procedures; amending RCW 10.77.060, 10.77.065,  
3 and 10.77.084; amending 2010 c 280 s 5 (uncodified); adding a new  
4 section to chapter 10.77 RCW; and creating a new section.

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

6 **Sec. 1.** RCW 10.77.060 and 2004 c 9 s 1 are each amended to read as  
7 follows:

8 (1)(a) Whenever a defendant has pleaded not guilty by reason of  
9 insanity, or there is reason to doubt his or her competency, the court  
10 on its own motion or on the motion of any party shall either appoint or  
11 request the secretary to designate ~~((at least two))~~ a qualified  
12 expert~~((s))~~ or professional person~~((s))~~, ~~((one of whom))~~ who shall be  
13 approved by the prosecuting attorney, to ~~((examine))~~ evaluate and  
14 report upon the mental condition of the defendant. If the defendant is  
15 charged with aggravated murder, the court may require the appointment  
16 of two evaluators. The signed order of the court shall serve as  
17 authority for the ~~((experts))~~ evaluator to be given access to all  
18 records held by any mental health, medical, educational, or  
19 correctional facility that relate to the present or past mental,

1 emotional, or physical condition of the defendant. (~~At least one of~~  
2 ~~the experts or professional persons appointed shall be a developmental~~  
3 ~~disabilities professional~~) If the court is advised by any party that  
4 the defendant may (~~be developmentally disabled~~) have a developmental  
5 disability, the examination must be performed by a developmental  
6 disabilities professional. (~~Upon agreement of the parties, the court~~  
7 ~~may designate one expert or professional person to conduct the~~  
8 ~~examination and report on the mental condition of the defendant. For~~  
9 ~~purposes of the examination, the court may order~~)

10 (b) The order of the court shall require the evaluation to take  
11 place in the community or in a jail or detention facility. In the case  
12 of an evaluation in a jail or detention facility which is performed by  
13 an evaluator designated by the secretary, the signed order of the court  
14 shall grant authority to the evaluator to cause the jail to transport  
15 the defendant (~~committed~~) to a hospital or other suitably secure  
16 public or private mental health facility for a period of (~~time~~  
17 necessary to complete the examination, but) commitment not to exceed  
18 fifteen days from the time of admission to the facility, if the  
19 evaluator determines that inpatient commitment is necessary in order to  
20 complete an accurate evaluation. Such commitment shall not extend  
21 beyond the reasonable time needed to complete the evaluation. If the  
22 evaluator determines that inpatient commitment is necessary, the  
23 evaluator shall promptly notify the court and all parties and shall  
24 provide an estimated time for the completion of the evaluation. (~~If~~  
25 ~~the defendant is being held in jail or other detention facility, upon~~  
26 ~~agreement of the parties, the court may direct that the examination be~~  
27 ~~conducted at the jail or other detention facility.~~

28 ~~(b))~~ (c) When a defendant is ordered to (~~be committed for~~  
29 inpatient examination) undergo an evaluation under this subsection  
30 (1), the court may delay granting bail until the defendant has been  
31 evaluated for competency or sanity and appears before the court.  
32 Following the evaluation, in determining bail the court shall consider:  
33 (i) Recommendations of the (~~expert or professional persons~~) evaluator  
34 regarding the defendant's competency, sanity, or diminished capacity;  
35 (ii) whether the defendant has a recent history of one or more violent  
36 acts; (iii) whether the defendant has previously been acquitted by  
37 reason of insanity or found incompetent; (iv) whether it is reasonably

1 likely the defendant will fail to appear for a future court hearing;  
2 and (v) whether the defendant is a threat to public safety.

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 examination authorized by subsection (1) of this section,  
6 and that the defendant shall have access to all information obtained by  
7 the court appointed expert(~~(s)~~) or professional person(~~(s)~~). The  
8 defendant's expert or professional person shall have the right to file  
9 his or her own report following the guidelines of subsection (3) of  
10 this section. If the defendant is indigent, the court shall upon the  
11 request of the defendant assist him or her in obtaining an expert or  
12 professional person.

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

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

15 (b) A diagnosis of the mental condition of the defendant;

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

19 (d) If the defendant has indicated his or her intention to rely on  
20 the defense of insanity pursuant to RCW 10.77.030, an opinion as to the  
21 defendant's sanity at the time of the act, and an opinion as to whether  
22 the defendant presents a substantial danger to other persons, or  
23 presents a substantial likelihood of committing criminal acts  
24 jeopardizing public safety or security, unless kept under further  
25 control by the court or other persons or institutions;

26 (e) When directed by the court, an opinion as to the capacity of  
27 the defendant to have a particular state of mind which is an element of  
28 the offense charged;

29 (f) An opinion as to whether the defendant should be evaluated by  
30 a (~~county~~) designated mental health professional under chapter 71.05  
31 RCW(~~, and an opinion as to whether the defendant is a substantial~~  
32 ~~danger to other persons, or presents a substantial likelihood of~~  
33 ~~committing criminal acts jeopardizing public safety or security, unless~~  
34 ~~kept under further control by the court or other persons or~~  
35 ~~institutions~~)).

36 (4) The secretary may execute such agreements as appropriate and  
37 necessary to implement this section.

1           **Sec. 2.** RCW 10.77.065 and 2008 c 213 s 1 are each amended to read  
2 as follows:

3           (1)(a)(i) The ((facility)) expert conducting the evaluation shall  
4 provide ((its)) his or her report and recommendation to the court in  
5 which the criminal proceeding is pending. A copy of the report and  
6 recommendation shall be provided to the designated mental health  
7 professional, the prosecuting attorney, the defense attorney, and the  
8 professional person at the local correctional facility where the  
9 defendant is being held, or if there is no professional person, to the  
10 person designated under (a)(ii) of this subsection. Upon request, the  
11 ((facility)) evaluator shall also provide copies of any source  
12 documents relevant to the evaluation to the designated mental health  
13 professional. The report and recommendation shall be provided not less  
14 than twenty-four hours preceding the transfer of the defendant to the  
15 correctional facility in the county in which the criminal proceeding is  
16 pending.

17           (ii) If there is no professional person at the local correctional  
18 facility, the local correctional facility shall designate a  
19 professional person as defined in RCW 71.05.020 or, in cooperation with  
20 the regional support network, a professional person at the regional  
21 support network to receive the report and recommendation.

22           (iii) ~~((When a defendant is transferred to the facility conducting~~  
23 ~~the evaluation, or))~~ Upon commencement of a defendant's evaluation in  
24 the local correctional facility, the local correctional facility must  
25 notify the evaluator ~~((or the facility conducting the evaluation))~~ of  
26 the name of the professional person, or person designated under (a)(ii)  
27 of this subsection to receive the report and recommendation.

28           (b) If the ((facility)) evaluator concludes, under RCW  
29 10.77.060(3)(f), the person should be ~~((kept under further control, an~~  
30 ~~evaluation shall be conducted))~~ evaluated by a designated mental health  
31 professional, the court shall order the evaluation of such person under  
32 chapter 71.05 RCW ~~((The court shall order an evaluation be conducted~~  
33 ~~by the appropriate designated mental health professional: (i))~~ prior  
34 to release from confinement ~~((for such person who is convicted, if~~  
35 ~~sentenced to confinement for twenty four months or less; (ii) for any~~  
36 ~~person who is acquitted; or (iii) for any person: (A) Whose charges~~  
37 ~~are dismissed pursuant to RCW 10.77.086(4); or (B) whose nonfelony~~  
38 ~~charges are dismissed)), if the person is acquitted, convicted and~~

1 sentenced to confinement for twenty-four months or less, or if the  
2 charges are dismissed pursuant to a finding of incompetent to stand  
3 trial.

4 (2) The designated mental health professional shall provide written  
5 notification within twenty-four hours of the results of the  
6 determination whether to commence proceedings under chapter 71.05 RCW.  
7 The notification shall be provided to the persons identified in  
8 subsection (1)(a) of this section.

9 (3) The prosecuting attorney shall provide a copy of the results of  
10 any proceedings commenced by the designated mental health professional  
11 under subsection (2) of this section to the ((~~facility conducting the~~  
12 ~~evaluation under this chapter~~) secretary.

13 (4) The fact of admission and all information and records compiled,  
14 obtained, or maintained in the course of providing services under this  
15 chapter may also be disclosed to the courts solely to prevent the entry  
16 of any evaluation or treatment order that is inconsistent with any  
17 order entered under chapter 71.05 RCW.

18 **Sec. 3.** RCW 10.77.084 and 2007 c 375 s 3 are each amended to read  
19 as follows:

20 (1)(a) If at any time during the pendency of an action and prior to  
21 judgment the court finds, following a report as provided in RCW  
22 10.77.060, a defendant is incompetent, the court shall order the  
23 proceedings against the defendant be stayed except as provided in  
24 subsection (4) of this section.

25 (b) ((~~A defendant found incompetent shall be evaluated at the~~  
26 ~~direction of the secretary and a determination made whether the~~  
27 ~~defendant is an individual with a developmental disability. Such~~  
28 ~~evaluation and determination shall be accomplished as soon as possible~~  
29 ~~following the court's placement of the defendant in the custody of the~~  
30 ~~secretary.~~

31 (i) ~~When appropriate, and subject to available funds, if the~~  
32 ~~defendant is determined to be an individual with a developmental~~  
33 ~~disability, he or she may be placed in a program specifically reserved~~  
34 ~~for the treatment and training of persons with developmental~~  
35 ~~disabilities where the defendant shall have the right to habilitation~~  
36 ~~according to an individualized service plan specifically developed for~~

1 the particular needs of the defendant. A copy of the evaluation shall  
2 be sent to the program.

3 (A) The program shall be separate from programs serving persons  
4 involved in any other treatment or habilitation program.

5 (B) The program shall be appropriately secure under the  
6 circumstances and shall be administered by developmental disabilities  
7 professionals who shall direct the habilitation efforts.

8 (C) The program shall provide an environment affording security  
9 appropriate with the charged criminal behavior and necessary to protect  
10 the public safety.

11 (ii) The department may limit admissions of such persons to this  
12 specialized program in order to ensure that expenditures for services  
13 do not exceed amounts appropriated by the legislature and allocated by  
14 the department for such services.

15 (iii) The department may establish admission priorities in the  
16 event that the number of eligible persons exceeds the limits set by the  
17 department.

18 (e)) At the end of the mental health treatment and restoration  
19 period, if any, or at any time a professional person determines  
20 competency has been, or is unlikely to be, restored, the defendant  
21 shall be returned to court for a hearing. If, after notice and  
22 hearing, competency has been restored, the stay entered under (a) of  
23 this subsection shall be lifted. If competency has not been restored,  
24 the proceedings shall be dismissed. If the court concludes that  
25 competency has not been restored, but that further treatment within the  
26 time limits established by RCW 10.77.086 or 10.77.088 is likely to  
27 restore competency, the court may order that treatment for purposes of  
28 competency restoration be continued. Such treatment may not extend  
29 beyond the combination of time provided for in RCW 10.77.086 or  
30 10.77.088.

31 ((d)) (c) If at any time during the proceeding the court finds,  
32 following notice and hearing, a defendant is not likely to regain  
33 competency, the proceedings shall be dismissed and the defendant shall  
34 be evaluated for civil commitment proceedings.

35 (2) If the defendant is referred to the designated mental health  
36 professional for consideration of initial detention proceedings under  
37 chapter 71.05 RCW pursuant to this chapter, the designated mental  
38 health professional shall provide prompt written notification of the

1 results of the determination whether to commence initial detention  
2 proceedings under chapter 71.05 RCW and whether the person was  
3 detained. The notification shall be provided to the court in which the  
4 criminal action was pending, the prosecutor, the defense attorney in  
5 the criminal action, and the facility that evaluated the defendant for  
6 competency.

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

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

15 (5) At or before the conclusion of any commitment period provided  
16 for by this section, the facility providing evaluation and treatment  
17 shall provide to the court a written evaluation report (~~of~~  
18 ~~examination~~) which meets the requirements of RCW 10.77.060(3). If the  
19 defendant is charged with a felony, the report of the first restoration  
20 period must include an assessment of the defendant's future  
21 dangerousness which is evidence-based regarding predictive validity.

22 NEW SECTION. Sec. 4. A new section is added to chapter 10.77 RCW  
23 to read as follows:

24 (1) A defendant found incompetent shall be evaluated at the  
25 direction of the secretary and a determination made whether the  
26 defendant is an individual with a developmental disability. The  
27 evaluation and determination must be accomplished as soon as possible  
28 following the court's placement of the defendant in the custody of the  
29 secretary.

30 (2) When appropriate, and subject to available funds, if the  
31 defendant is determined to be an individual with a developmental  
32 disability, he or she may be placed in a program specifically reserved  
33 for the treatment and training of persons with developmental  
34 disabilities where the defendant has the right to habilitation  
35 according to an individualized service plan specifically developed for  
36 the particular needs of the defendant. A copy of the evaluation must  
37 be sent to the program.

1 (a) The program must be separate from programs serving persons  
2 involved in any other treatment or habilitation program.

3 (b) The program must be appropriately secure under the  
4 circumstances and must be administered by developmental disabilities  
5 professionals who shall direct the habilitation efforts.

6 (c) The program shall provide an environment affording security  
7 appropriate with the charged criminal behavior and necessary to protect  
8 the public safety.

9 (3) The department may limit admissions of such persons to this  
10 specialized program in order to ensure that expenditures for services  
11 do not exceed amounts appropriated by the legislature and allocated by  
12 the department for such services.

13 (4) The department may establish admission priorities in the event  
14 that the number of eligible persons exceeds the limits set by the  
15 department.

16 NEW SECTION. **Sec. 5.** The legislature does not intend to increase  
17 or decrease the prevailing waiting times for competency evaluations as  
18 a result of this act. Rather, the intent of this act is to capture  
19 savings by reducing state hospital admissions to the extent practicable  
20 without sacrificing the quality of competency evaluations or increasing  
21 the burden on counties or jails. The department of social and health  
22 services shall provide adequate staffing for competency evaluations so  
23 that the increase in the proportion of competency evaluations performed  
24 in a jail or secure detention facility as a result of this act does not  
25 cause the number of jail days consumed by defendants waiting for a  
26 competency evaluation to increase during the 2011-2013 biennium.

27 **Sec. 6.** 2010 c 280 s 5 (uncodified) is amended to read as follows:  
28 Sections 2 and 3 of this act take effect January 1, (~~(2012)~~) 2013.

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