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**SUBSTITUTE HOUSE BILL 1597**

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**State of Washington**

**64th Legislature**

**2015 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Jinkins, Rodne, and Wylie; by request of Department of Social and Health Services)

READ FIRST TIME 02/20/15.

1       AN ACT Relating to improving timeliness of competency evaluation  
2 and restoration services, by clarifying alternative locations for the  
3 provision of competency restoration services and defining time  
4 periods of commitment; amending RCW 10.77.086, 10.77.088, 10.77.220,  
5 71.05.235, and 10.77.065; reenacting and amending RCW 10.77.065;  
6 creating a new section; providing an effective date; and providing an  
7 expiration date.

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

9       NEW SECTION.     **Sec. 1.**     The legislature finds that there are  
10 currently no alternatives to competency restoration provided in the  
11 state hospitals. Subject to the availability of amounts appropriated  
12 for this specific purpose, the legislature encourages the department  
13 of social and health services to develop, on a phased-in basis,  
14 alternative locations and increased access to competency restoration  
15 services under chapter 10.77 RCW for individuals who do not require  
16 in-patient psychiatric hospitalization level services. This may  
17 include services within county-operated or municipal-operated jails  
18 and other community settings.

19       **Sec. 2.**     RCW 10.77.086 and 2013 c 289 s 2 are each amended to  
20 read as follows:

1 (1)(a) If the defendant is charged with a felony and determined  
2 to be incompetent, until he or she has regained the competency  
3 necessary to understand the proceedings against him or her and assist  
4 in his or her own defense, (~~or has been determined unlikely to~~  
5 ~~regain competency pursuant to RCW 10.77.084(1)(b),~~) but in any event  
6 for a period of no longer than ninety days, the court:

7 (i) Shall commit the defendant to the custody of the secretary  
8 who shall place such defendant in an appropriate facility of the  
9 department for evaluation and treatment; or

10 (ii) May alternatively order the defendant to undergo evaluation  
11 and treatment at some other facility as determined by the department,  
12 or under the guidance and control of a professional person. The  
13 facilities may include community mental health providers or other  
14 local facilities that contract with the department and are willing  
15 and able to provide treatment under this section. During the  
16 2015-2017 fiscal biennium, county or municipal jails may be used for  
17 this purpose if the secretary determines that there is an emergent  
18 need for beds and documents the justification, including a plan to  
19 address the emergency. If a county or municipal jail is used for this  
20 purpose, competency restoration patients must be physically separated  
21 from other populations at the jail, the model of restoration  
22 treatment services must be substantially equivalent to that provided  
23 at the state psychiatric hospitals, and restoration services must be  
24 provided within a therapeutic environment.

25 The ninety-day period for evaluation and treatment under this  
26 subsection (1) includes only the time the defendant is actually at  
27 the facility and is in addition to reasonable time for transport to  
28 or from the facility.

29 (b) For a defendant whose highest charge is a class C felony, or  
30 a class B felony that is not classified as violent under RCW  
31 9.94A.030, the maximum time allowed for the initial period of  
32 commitment for competency restoration is forty-five days. The forty-  
33 five day period includes only the time the defendant is actually at  
34 the facility and is in addition to reasonable time for transport to  
35 or from the facility.

36 (c) If the court has determined that the defendant is unlikely to  
37 regain competency, the court may dismiss the charges without  
38 prejudice without ordering the defendant to undergo restoration  
39 treatment, in which case the court shall order that the defendant be

1 referred for evaluation for civil commitment in the manner provided  
2 in subsection (4) of this section.

3 (2) On or before expiration of the initial period of commitment  
4 under subsection (1) of this section the court shall conduct a  
5 hearing, at which it shall determine whether or not the defendant is  
6 incompetent.

7 (3) If the court finds by a preponderance of the evidence that a  
8 defendant charged with a felony is incompetent, the court shall have  
9 the option of extending the order of commitment or alternative  
10 treatment for an additional period of ninety days, but the court must  
11 at the time of extension set a date for a prompt hearing to determine  
12 the defendant's competency before the expiration of the second  
13 restoration period. The defendant, the defendant's attorney, or the  
14 prosecutor has the right to demand that the hearing be before a jury.  
15 No extension shall be ordered for a second or third restoration  
16 period as provided in subsection (4) of this section if the  
17 defendant's incompetence has been determined by the secretary to be  
18 solely the result of a developmental disability which is such that  
19 competence is not reasonably likely to be regained during an  
20 extension. The ninety-day period includes only the time the defendant  
21 is actually at the facility and is in addition to reasonable time for  
22 transport to or from the facility.

23 (4) For persons charged with a felony, at the hearing upon the  
24 expiration of the second restoration period or at the end of the  
25 first restoration period, in the case of a defendant with a  
26 developmental disability, if the jury or court finds that the  
27 defendant is incompetent, the charges shall be dismissed without  
28 prejudice, and the court shall order the defendant be committed to a  
29 state hospital as defined in RCW 72.23.010 for up to seventy-two  
30 hours starting from admission to the facility, excluding Saturdays,  
31 Sundays, and holidays, for evaluation for the purpose of filing a  
32 civil commitment petition under chapter 71.05 RCW. The criminal  
33 charges shall not be dismissed if the court or jury finds that: (a)  
34 The defendant (i) is a substantial danger to other persons; or (ii)  
35 presents a substantial likelihood of committing criminal acts  
36 jeopardizing public safety or security; and (b) there is a  
37 substantial probability that the defendant will regain competency  
38 within a reasonable period of time. In the event that the court or  
39 jury makes such a finding, the court may extend the period of  
40 commitment for up to an additional six months. The six-month period

1 includes only the time the defendant is actually at the facility and  
2 is in addition to reasonable time for transport to or from the  
3 facility.

4 **Sec. 3.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to  
5 read as follows:

6 (1)(a) If the defendant is charged with a nonfelony crime which  
7 is a serious offense as identified in RCW 10.77.092 and found by the  
8 court to be not competent, then the court (~~shall order the secretary~~  
9 ~~to place the defendant~~):

10 (i) (~~At a secure mental health facility in the custody of the~~  
11 ~~department or an agency designated by the department for mental~~  
12 ~~health treatment and restoration of competency.)) Shall commit the  
13 defendant to the custody of the secretary who shall place such  
14 defendant in an appropriate facility of the department for evaluation  
15 and treatment;~~

16 (ii) May alternatively order the defendant to undergo evaluation  
17 and treatment at some other facility as determined by the department,  
18 or under the guidance and control of a professional person. The  
19 facilities may include community mental health providers or other  
20 local facilities that contract with the department and are willing  
21 and able to provide treatment under this section. During the  
22 2015-2017 fiscal biennium, county or municipal jails may be used for  
23 this purpose if the secretary determines that there is an emergent  
24 need for beds and documents the justification, including a plan to  
25 address the emergency. If a county or municipal jail is used for this  
26 purpose, competency restoration patients must be physically separated  
27 from other populations at the jail, the model of restoration  
28 treatment services must be substantially equivalent to that provided  
29 at the state psychiatric hospitals, and restoration services must be  
30 provided within a therapeutic environment. The placement shall not  
31 exceed fourteen days in addition to any unused time of the evaluation  
32 under RCW 10.77.060. The court shall compute this total period and  
33 include its computation in the order. The fourteen-day period plus  
34 any unused time of the evaluation under RCW 10.77.060 shall be  
35 considered to include only the time the defendant is actually at the  
36 facility and shall be in addition to reasonable time for transport to  
37 or from the facility;

38 (~~(ii))~~ (iii) On conditional release for up to ninety days for  
39 mental health treatment and restoration of competency; or

1       (~~(iii)~~) (iv) Any combination of this subsection.

2       (b) If the court has determined that the defendant is unlikely to  
3 regain competency, the court may dismiss the charges without  
4 prejudice without ordering the defendant to undergo restoration  
5 treatment, in which case the court shall order that the defendant be  
6 referred for evaluation for civil commitment in the manner provided  
7 in (c) of this subsection.

8       (c)(i) If the proceedings are dismissed under RCW 10.77.084 and  
9 the defendant was on conditional release at the time of dismissal,  
10 the court shall order the designated mental health professional  
11 within that county to evaluate the defendant pursuant to chapter  
12 71.05 RCW. The evaluation may be conducted in any location chosen by  
13 the professional.

14       (ii) If the defendant was in custody and not on conditional  
15 release at the time of dismissal, the defendant shall be detained and  
16 sent to an evaluation and treatment facility for up to seventy-two  
17 hours, excluding Saturdays, Sundays, and holidays, for evaluation for  
18 purposes of filing a petition under chapter 71.05 RCW. The seventy-  
19 two-hour period shall commence upon the next nonholiday weekday  
20 following the court order and shall run to the end of the last  
21 nonholiday weekday within the seventy-two-hour period.

22       (2) If the defendant is charged with a nonfelony crime that is  
23 not a serious offense as defined in RCW 10.77.092:

24       The court may stay or dismiss proceedings and detain the  
25 defendant for sufficient time to allow the designated mental health  
26 professional to evaluate the defendant and consider initial detention  
27 proceedings under chapter 71.05 RCW. The court must give notice to  
28 all parties at least twenty-four hours before the dismissal of any  
29 proceeding under this subsection, and provide an opportunity for a  
30 hearing on whether to dismiss the proceedings.

31       **Sec. 4.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to  
32 read as follows:

33       No person who is criminally insane confined pursuant to this  
34 chapter shall be incarcerated in a state correctional institution or  
35 facility: PROVIDED, That nothing herein shall prohibit confinement in  
36 a mental health facility located wholly within a correctional  
37 institution. Confinement of a person who is criminally insane in a  
38 county jail or other local facility while awaiting either placement

1 in a treatment program or a court hearing pursuant to this chapter is  
2 permitted for no more than seven days.

3 **Sec. 5.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to  
4 read as follows:

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

20 (2) If an individual is placed in an evaluation and treatment  
21 facility under RCW 10.77.088(1)((~~b~~)) (c)(ii), a professional person  
22 shall evaluate the individual for purposes of determining whether to  
23 file a ninety-day inpatient or outpatient petition under chapter  
24 71.05 RCW. Before expiration of the seventy-two hour evaluation  
25 period authorized under RCW 10.77.088(1)((~~b~~)) (c)(ii), the  
26 professional person shall file a petition or, if the recommendation  
27 of the professional person is to release the individual, present his  
28 or her recommendation to the superior court of the county in which  
29 the criminal charge was dismissed. The superior court shall review  
30 the recommendation not later than forty-eight hours, excluding  
31 Saturdays, Sundays, and holidays, after the recommendation is  
32 presented. If the court rejects the recommendation to unconditionally  
33 release the individual, the court may order the individual detained  
34 at a designated evaluation and treatment facility for not more than a  
35 seventy-two hour evaluation and treatment period and direct the  
36 individual to appear at a surety hearing before that court within  
37 seventy-two hours, or the court may release the individual but direct  
38 the individual to appear at a surety hearing set before that court  
39 within eleven days, at which time the prosecutor may file a petition

1 under this chapter for ninety-day inpatient or outpatient treatment.  
2 If a petition is filed by the prosecutor, the court may order that  
3 the person named in the petition be detained at the evaluation and  
4 treatment facility that performed the evaluation under this  
5 subsection or order the respondent to be in outpatient treatment. If  
6 a petition is filed but the individual fails to appear in court for  
7 the surety hearing, the court shall order that a mental health  
8 professional or peace officer shall take such person or cause such  
9 person to be taken into custody and placed in an evaluation and  
10 treatment facility to be brought before the court the next judicial  
11 day after detention. Upon the individual's first appearance in court  
12 after a petition has been filed, proceedings under RCW 71.05.310 and  
13 71.05.320 shall commence. For an individual subject to this  
14 subsection, the prosecutor or professional person may directly file a  
15 petition for ninety-day inpatient or outpatient treatment and no  
16 petition for initial detention or fourteen-day detention is required  
17 before such a petition may be filed.

18 The court shall conduct the hearing on the petition filed under  
19 this subsection within five judicial days of the date the petition is  
20 filed. The court may continue the hearing upon the written request of  
21 the person named in the petition or the person's attorney, for good  
22 cause shown, which continuance shall not exceed five additional  
23 judicial days. If the person named in the petition requests a jury  
24 trial, the trial shall commence within ten judicial days of the date  
25 of the filing of the petition. The burden of proof shall be by clear,  
26 cogent, and convincing evidence and shall be upon the petitioner. The  
27 person shall be present at such proceeding, which shall in all  
28 respects accord with the constitutional guarantees of due process of  
29 law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

30 During the proceeding the person named in the petition shall  
31 continue to be detained and treated until released by order of the  
32 court. If no order has been made within thirty days after the filing  
33 of the petition, not including any extensions of time requested by  
34 the detained person or his or her attorney, the detained person shall  
35 be released.

36 (3) If a designated mental health professional or the  
37 professional person and prosecuting attorney for the county in which  
38 the criminal charge was dismissed or attorney general, as  
39 appropriate, stipulate that the individual does not present a  
40 likelihood of serious harm or is not gravely disabled, the hearing

1 under this section is not required and the individual, if in custody,  
2 shall be released.

3 (4) The individual shall have the rights specified in RCW  
4 71.05.360 (8) and (9).

5 **Sec. 6.** RCW 10.77.065 and 2014 c 10 s 3 are each amended to read  
6 as follows:

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

14 (ii) A copy of the report and recommendation shall be provided to  
15 the designated mental health professional, the prosecuting attorney,  
16 the defense attorney, and the professional person at the local  
17 correctional facility where the defendant is being held, or if there  
18 is no professional person, to the person designated under (a)(iv) of  
19 this subsection. Upon request, the evaluator shall also provide  
20 copies of any source documents relevant to the evaluation to the  
21 designated mental health professional.

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

35 (iv) If there is no professional person at the local correctional  
36 facility, the local correctional facility shall designate a  
37 professional person as defined in RCW 71.05.020 or, in cooperation  
38 with the regional support network, a professional person at the  
39 regional support network to receive the report and recommendation.



1 (v) Upon commencement of a defendant's evaluation in the local  
2 correctional facility, the local correctional facility must notify  
3 the evaluator of the name of the professional person, or person  
4 designated under (a)(iv) of this subsection, to receive the report  
5 and recommendation.

6 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the  
7 person should be evaluated by a designated mental health professional  
8 under chapter 71.05 RCW, the court shall order such evaluation be  
9 conducted prior to release from confinement when the person is  
10 acquitted or convicted and sentenced to confinement for twenty-four  
11 months or less, or when charges are dismissed pursuant to a finding  
12 of incompetent to stand trial.

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

18 (3) The prosecuting attorney shall provide a copy of the results  
19 of any proceedings commenced by the designated mental health  
20 professional under subsection (2) of this section to the secretary.

21 (4) A facility conducting a civil commitment evaluation under RCW  
22 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a  
23 determination to release the person instead of filing a civil  
24 commitment petition must provide written notice to the prosecutor and  
25 defense attorney at least twenty-four hours prior to release. The  
26 notice may be given by electronic mail, facsimile, or other means  
27 reasonably likely to communicate the information immediately.

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

33 **Sec. 7.** RCW 10.77.065 and 2014 c 225 s 59 and 2014 c 10 s 3 are  
34 each reenacted and amended to read as follows:

35 (1)(a)(i) The expert conducting the evaluation shall provide his  
36 or her report and recommendation to the court in which the criminal  
37 proceeding is pending. For a competency evaluation of a defendant who  
38 is released from custody, if the evaluation cannot be completed  
39 within twenty-one days due to a lack of cooperation by the defendant,

1 the evaluator shall notify the court that he or she is unable to  
2 complete the evaluation because of such lack of cooperation.

3 (ii) A copy of the report and recommendation shall be provided to  
4 the designated mental health professional, the prosecuting attorney,  
5 the defense attorney, and the professional person at the local  
6 correctional facility where the defendant is being held, or if there  
7 is no professional person, to the person designated under (a)(iv) of  
8 this subsection. Upon request, the evaluator shall also provide  
9 copies of any source documents relevant to the evaluation to the  
10 designated mental health professional.

11 (iii) Any facility providing inpatient services related to  
12 competency shall discharge the defendant as soon as the facility  
13 determines that the defendant is competent to stand trial. Discharge  
14 shall not be postponed during the writing and distribution of the  
15 evaluation report. Distribution of an evaluation report by a facility  
16 providing inpatient services shall ordinarily be accomplished within  
17 two working days or less following the final evaluation of the  
18 defendant. If the defendant is discharged to the custody of a local  
19 correctional facility, the local correctional facility must continue  
20 the medication regimen prescribed by the facility, when clinically  
21 appropriate, unless the defendant refuses to cooperate with  
22 medication and an involuntary medication order by the court has not  
23 been entered.

24 (iv) If there is no professional person at the local correctional  
25 facility, the local correctional facility shall designate a  
26 professional person as defined in RCW 71.05.020 or, in cooperation  
27 with the behavioral health organization, a professional person at the  
28 behavioral health organization to receive the report and  
29 recommendation.

30 (v) Upon commencement of a defendant's evaluation in the local  
31 correctional facility, the local correctional facility must notify  
32 the evaluator of the name of the professional person, or person  
33 designated under (a)(iv) of this subsection, to receive the report  
34 and recommendation.

35 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the  
36 person should be evaluated by a designated mental health professional  
37 under chapter 71.05 RCW, the court shall order such evaluation be  
38 conducted prior to release from confinement when the person is  
39 acquitted or convicted and sentenced to confinement for twenty-four

1 months or less, or when charges are dismissed pursuant to a finding  
2 of incompetent to stand trial.

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

8 (3) The prosecuting attorney shall provide a copy of the results  
9 of any proceedings commenced by the designated mental health  
10 professional under subsection (2) of this section to the secretary.

11 (4) A facility conducting a civil commitment evaluation under RCW  
12 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a  
13 determination to release the person instead of filing a civil  
14 commitment petition must provide written notice to the prosecutor and  
15 defense attorney at least twenty-four hours prior to release. The  
16 notice may be given by electronic mail, facsimile, or other means  
17 reasonably likely to communicate the information immediately.

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

23 NEW SECTION. **Sec. 8.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 9.** Section 6 of this act expires April 1,  
28 2016.

29 NEW SECTION. **Sec. 10.** Section 7 of this act takes effect April  
30 1, 2016.

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