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**SENATE BILL 5039**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators O'Ban, Becker, and Wagoner

AN ACT Relating to adjusting the duration of competency restoration treatment based on risk; amending RCW 10.77.060, 10.77.084, 10.77.086, 10.77.088, 10.77.065, and 71.05.235; and adding a new section to chapter 10.77 RCW.

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

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

(1) For each defendant determined to be incompetent under RCW 10.77.086 or 10.77.088, the court must determine the available competency restoration treatment period using the calculation described in the following table:

**Available Competency Restoration Treatment Period Calculation Table**

|  |  |
| --- | --- |
| **Current Charges** | **Score A (select only one number)** |
| Nonfelony offense, or felony escalator offense, meaning conduct which would be a nonfelony offense but for the occupational status of the alleged victim under RCW 9A.36.031(1) (b), (c), (e), (g), (i), (j), or (k). | 1 |
| Nonviolent felony offense, excluding felony escalator offenses or felony sex offenses. | 2 |
| Violent offense or felony sex offense under RCW 9.94A.030, excluding serious violent offenses . | 3 |
| Serious violent offense under RCW 9.94A.030. | 4 |
| **Criminal History** | **Score B (select only one number)** |
| Nonfelony offense, nonviolent felony offense other than a felony sex offense, or no criminal history. | 0 |
| Violent offense or felony sex offense under RCW 9.94A.030, excluding serious violent offenses. | 1 |
| Serious violent offense under RCW 9.94A.030. | 2 |
| **Total Score (sum of score A and score B, a number from 1 to 6):** |  |

**Instructions for score A:** Select the number that corresponds to the category containing the highest level offense included among the defendant's current charges.

**Instructions for score B:** Select the number that corresponds to the category containing the highest level offense included among the defendant's criminal history that may be counted under subsection (2) of this section, including charges acquitted by reason of insanity or dismissed without prejudice due to incompetency to stand trial under chapter 10.77 RCW.

**Instructions for total score:** The total score is the sum of score A and score B, a number from 1 to 6.

**Available Competency Restoration Treatment Period**

Total score of 1: No competency restoration treatment period allowed.

Total score of 2: One competency restoration treatment period of up to sixty days.

Total score of 3: One competency restoration treatment period of up to sixty days, followed by a second period of up to ninety days.

Total score of 4 through 6: One competency restoration treatment period of up to sixty days, followed by a second period of up to ninety days, followed by a third period of up to one hundred eighty days.

(2) When calculating the available competency restoration treatment period under this section, an offense may be counted as criminal history if the charges resulted in conviction, acquittal by reason of insanity, or dismissal without prejudice under this chapter based on incompetency to stand trial, except as provided below.

(a) Class B prior felonies may not be counted if since the last date of release from confinement (including full-time residential treatment) pursuant to the felony charge the defendant has spent ten consecutive years in the community without committing any crime that results in conviction, acquittal by reason of insanity, or dismissal without prejudice based on incompetency to stand trial.

(b) Class C prior felonies may not be counted if since the last date of release from confinement (including full-time residential treatment) pursuant to the felony charge the defendant has spent five consecutive years in the community without committing any crime that results in conviction, acquittal by reason of insanity, or dismissal without prejudice based on incompetency to stand trial.

(3) The court may increase the total score used for the calculation of the available competency restoration treatment period by one point upon motion by the prosecuting attorney if the court determines that the defendant's current charges and criminal history do not adequately convey the risk presented by the defendant, based on one or more of the following factors:

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

(b) The number and nature of related charges pending against the defendant;

(c) The length of potential confinement if the defendant is convicted; or

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

**Sec.**  RCW 10.77.060 and 2016 sp.s. c 29 s 408 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, 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) 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, 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.

(c) 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.

(d) 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.

(e) 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.

(f) When a defendant is ordered to be committed for inpatient evaluation under this subsection (1), 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.

(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 suffers from 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; and

(g) To assist the court, an advisory calculation of the available competency restoration treatment period under section 1 of this act if the defendant is found incompetent to stand trial.

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

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

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

(b) The court may order a defendant who has been found to be incompetent to undergo competency restoration treatment at a facility designated by the department if the defendant is eligible under RCW 10.77.086 ((~~or~~)), 10.77.088, or section 1 of this act. At the end of each competency restoration period or at any time a professional person determines competency has been, or is unlikely to be, restored, the defendant shall be returned to court for a hearing, except that if the opinion of the professional person is that the defendant remains incompetent and the hearing is held before the expiration of the current competency restoration period, the parties may agree to waive the defendant's presence, to remote participation by the defendant at a hearing, or to presentation of an agreed order in lieu of a hearing. The facility shall promptly notify the court and all parties of the date on which the competency restoration period commences and expires so that a timely hearing date may be scheduled.

(c) If, following notice and hearing or entry of an agreed order under (b) of this subsection, the court finds that competency has been restored, the court shall lift the stay entered under (a) of this subsection. If the court finds that competency has not been restored, the court shall dismiss the proceedings without prejudice, except that the court may order a further period of competency restoration treatment if it finds that a further competency restoration treatment ((~~within the time limits established by RCW 10.77.086 or 10.77.088~~)) period is available under section 1 of this act, that further competency restoration is likely to restore competency, and a further period of treatment is ((~~allowed~~)) not prohibited under RCW 10.77.086 or 10.77.088.

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

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

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

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

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

(a) The current competency restoration treatment period is the last competency restoration treatment period available under section 1 of this act;

(b) During the current competency restoration treatment period, the facility determines that the defendant is incompetent and the defendant's incompetence is solely due to a developmental disability;

(c) During the current competency restoration treatment period, the facility determines that the defendant is incompetent and the defendant is not likely to regain competency during any remaining available competency restoration treatment period; or

(d) The current competency restoration treatment period is the last period available before a court or jury must determine whether to commit the defendant to a final one hundred eighty-day treatment period under RCW 10.77.086(3)(d).

**Sec.**  RCW 10.77.086 and 2015 1st sp.s. c 7 s 5 are each amended to read as follows:

(1)((~~(a)(i)~~)) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, but in any event for ((~~a period of~~)) no longer than ((~~ninety days~~)) the available competency restoration treatment period or periods under section 1 of this act, the court:

((~~(A)~~)) (a) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or

((~~(B)~~)) (b) May alternatively order the defendant to undergo evaluation and treatment at some other facility or provider as determined by the department, or under the guidance and control of a professional person. The facilities or providers may include community mental health providers or other local facilities that contract with the department and are willing and able to provide treatment under this section. ((~~During the 2015-2017 fiscal biennium, the department may contract with one or more cities or counties to provide competency restoration services in a city or county jail if the city or county jail is willing and able to serve as a location for competency restoration services and if the secretary determines that there is an emergent need for beds and documents the justification, including a plan to address the emergency. Patients receiving competency restoration services in a city or county jail must be physically separated from other populations at the jail and restoration treatment services must be provided as much as possible within a therapeutic environment.~~

~~(ii)~~)) (2) The ((~~ninety day period for evaluation and~~)) available periods of competency restoration treatment under ((~~this~~)) subsection (1) ((~~includes~~)) of this section include only the time the defendant is actually at the facility and is in addition to reasonable time for transport to or from the facility((~~.~~

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

~~(c) If the court determines or the parties agree that the defendant is unlikely to regain competency, the court may dismiss the charges without prejudice without ordering the defendant to undergo restoration treatment, in which case the court shall order that the defendant be referred for evaluation for civil commitment in the manner provided in subsection (4) of this section~~)).

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

((~~(3) If the court finds~~)) (a) The burden of proof is upon the state to establish by a preponderance of the evidence that a defendant charged with a felony is incompetent((~~, the court shall have the option of extending the order of commitment or alternative treatment for an additional period of ninety days, but the court must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second restoration period~~)). The defendant, the defendant's attorney, or the prosecutor has the right to demand that the hearing be before a jury.

(b) If the court or jury determines or the parties agree that the defendant is unlikely to regain competency at any stage, the court must dismiss the charges without prejudice without a further order for competency restoration treatment and instead order that the defendant be referred for evaluation for civil commitment in the manner provided under subsection (4) of this section.

(c) No extension beyond the initial competency restoration treatment period shall be ordered ((~~for a second or third restoration period as provided in subsection (4) of this section~~)) if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension. ((~~The ninety-day period includes only the time the defendant is actually at the facility and is in addition to reasonable time for transport to or from the facility.~~))

(d) No final one hundred eighty-day period of competency restoration treatment shall be ordered unless the court or jury finds that: (i) The defendant (A) is a substantial danger to other persons; or (B) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (ii) there is a substantial probability that the defendant will regain competency within a reasonable period of time.

(4) For persons charged with a felony, at the hearing upon the expiration of the ((~~second restoration period~~)) available competency restoration treatment period or periods under section 1 of this act or ((~~at the end of the first restoration period in the case of a defendant with a developmental disability~~)) at any earlier stage when dismissal without prejudice is required under this section, if the jury or court finds that the defendant is incompetent((~~, or if the court or jury at any stage finds that the defendant is incompetent and the court determines that the defendant is unlikely to regain competency~~)), the court shall dismiss the charges ((~~shall be dismissed~~)) without prejudice((~~,~~)) and ((~~the court shall~~)) order the defendant be committed to a state hospital as defined in RCW 72.23.010 for up to seventy-two hours starting from admission to the facility, excluding Saturdays, Sundays, and holidays, for evaluation for the purpose of filing a civil commitment petition under chapter 71.05 RCW. ((~~The criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for up to an additional six months. The six-month period includes only the time the defendant is actually at the facility and is in addition to reasonable time for transport to or from the facility.~~))

**Sec.**  RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended to read as follows:

(1)(a) If the defendant is charged with a nonfelony crime ((~~which is a serious offense as identified in RCW 10.77.092 and found by the court to be not competent, then~~)), the court, for no longer than the available competency restoration treatment period, if any, under section 1 of this act:

(i) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for ((~~evaluation and~~)) competency restoration treatment;

(ii) May alternatively order the defendant to undergo ((~~evaluation and~~)) competency restoration treatment at some other facility or provider as determined by the department, or under the guidance and control of a professional person. The facilities or providers may include community mental health providers or other local facilities that contract with the department and are willing and able to provide treatment under this section((~~. During the 2015-2017 fiscal biennium, the department may contract with one or more cities or counties to provide competency restoration services in a city or county jail if the city or county jail is willing and able to serve as a location for competency restoration services and if the secretary determines that there is an emergent need for beds and documents the justification, including a plan to address the emergency. Patients receiving competency restoration services in a city or county jail must be physically separated from other populations at the jail and restoration treatment services must be provided as much as possible within a therapeutic environment. The placement under (a)(i) and (ii) of this subsection shall not exceed fourteen days in addition to any unused time of the evaluation under RCW 10.77.060. The court shall compute this total period and include its computation in the order.~~));

(iii) May alternatively order that the defendant be placed on conditional release for mental health and competency restoration treatment.

(b) If the court determines or the parties agree that the defendant is unlikely to regain competency, the court may dismiss the charges without prejudice without ordering the defendant to undergo competency restoration treatment, in which case the court shall order that the defendant be referred for evaluation for civil commitment in the manner provided in subsection (3) of this section.

(2) The ((~~fourteen-day~~)) available competency restoration treatment period ((~~plus any unused time of the evaluation under RCW 10.77.060~~)) shall be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility((~~;~~

~~(iii) May alternatively order that the defendant be placed on conditional release for up to ninety days for mental health treatment and restoration of competency; or~~

~~(iv) May order any combination of this subsection.~~

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

((~~(c)(i)~~)) (3) If the ((~~proceedings are dismissed under RCW 10.77.084 and~~)) defendant is found incompetent and there is no available competency restoration period, the available competency restoration treatment period has expired, or there is an available competency restoration period but the court determines that the defendant is unlikely to regain competency under subsection (1)(b) of this section, the court must dismiss the charges without prejudice and enter one of the following orders:

(a) If the defendant ((~~was~~)) is on conditional release at the time of dismissal, the court shall order the designated crisis responder within that county to evaluate the defendant pursuant to chapter 71.05 RCW. The evaluation may be conducted in any location chosen by the professional.

((~~(ii)~~)) (b) If the defendant ((~~was~~)) is in custody ((~~and not on conditional release at the time of dismissal~~)) and is charged with a nonfelony which is a serious offense under RCW 10.77.092, the court shall detain the defendant ((~~shall be detained and sent~~)) to an evaluation and treatment facility for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, for evaluation for purposes of filing a petition under chapter 71.05 RCW. The seventy-two hour period shall commence upon the next nonholiday weekday following the court order and shall run to the end of the last nonholiday weekday within the seventy-two-hour period.

((~~(2)~~)) (c) If the defendant is in custody and is charged with a nonfelony ((~~crime~~)) that is not a serious offense ((~~as defined in~~)) under RCW 10.77.092((~~:~~)), the court ((~~may stay or dismiss proceedings and~~)) shall detain the defendant for sufficient time to allow the designated crisis responder to evaluate the defendant and consider initial detention proceedings under chapter 71.05 RCW. The court must give notice to all parties at least twenty-four hours before the dismissal of any proceeding under this subsection, and provide an opportunity for a hearing on whether to dismiss the proceedings.

**Sec.**  RCW 10.77.065 and 2016 sp.s. c 29 s 409 are each amended to read as follows:

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

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

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

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

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

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

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

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

(4) A facility conducting a civil commitment evaluation under RCW 10.77.086(4) or 10.77.088((~~(1)(c)(ii)~~)) (3) that makes a determination to release the person instead of filing a civil commitment petition must provide written notice to the prosecutor and defense attorney at least twenty-four hours prior to release. The notice may be given by email, facsimile, or other means reasonably likely to communicate the information immediately.

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

**Sec.**  RCW 71.05.235 and 2016 sp.s. c 29 s 231 are each amended to read as follows:

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

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.088((~~(1)(c)(ii)~~)) (3), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under this chapter. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.088((~~(1)(c)(ii)~~)) (3), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

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

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

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

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

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