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**SENATE BILL 5444**

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

**By** Senators Dhingra, O'Ban, Darneille, Wagoner, Frockt, Kuderer, and Nguyen; by request of Office of the Governor

AN ACT Relating to providing timely competency evaluations and restoration services to persons suffering from behavioral health disorders within the framework of the forensic mental health care system consistent with the requirements agreed to in the Trueblood settlement agreement; amending RCW 10.31.110, 10.77.086, and 10.77.088; adding a new section to chapter 10.77 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature recognizes that there has been a nationwide increase in the number of individuals with behavioral health disorders in the criminal justice system. The legislature also recognizes that reforms must be made to our own behavioral health systems and services to meet the increasing demands in our state, to provide timely competency evaluations and restoration services, and to comply with federal court orders issued in *A.B., by and through Trueblood, et al., v. DSHS, et al.*, No. 15-35462 ("Trueblood"). The legislature acknowledges that these reforms will require the support of a broad range of stakeholders, including local law enforcement, prosecuting attorneys, community members, and health care providers. The legislature further acknowledges the significant efforts of the parties to the Trueblood litigation to establish a roadmap and framework within their settlement agreement for proposed systemic reforms to the forensic mental health care system. It is the intent of the legislature to enact appropriate reforms consistent with the goals agreed to in the Trueblood settlement agreement, to continue to engage with stakeholders and community partners to address the needs of this vulnerable population, and to ensure that the public safety needs of our communities are met.

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

(1) Subject to the limitations described in this subsection, a court may appoint an impartial forensic navigator approved by the department to assist individuals who have been referred for competency evaluation or restoration to both navigate the forensic legal process and access available behavioral health resources. A court may not issue an order appointing a forensic navigator unless there is adequate forensic navigator capacity to provide these services at the time the order is issued.

(2) Unless otherwise directed by the court, the duties of the forensic navigator include, but are not limited to, the following:

(a) To investigate and collect relevant information about the individual, including any relevant background, prior behavioral health history, and the circumstances that led to the current matter before the court, and report that information to the court;

(b) To meet with, interview, or observe the individual, and report to the court any views or positions expressed by the individual on options pending before the court;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order.

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

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

(5) Upon presentation of the court order of appointment by the forensic navigator, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or behavioral health provider shall permit the forensic navigator to inspect and copy any records relating to the individual named in the order of appointment, without the consent of the individual.

**Sec.**  RCW 10.31.110 and 2014 c 225 s 57 are each amended to read as follows:

(1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a ((~~nonfelony crime that is not a serious offense as identified in RCW 10.77.092~~)) misdemeanor, gross misdemeanor, class C felony, or a class B felony that is not classified as violent under RCW 9.94A.030, excluding sex offenses under RCW 9.94A.030, and the individual is known by history or consultation with the behavioral health organization, managed care organization, or behavioral health administrative services organization to suffer from a mental disorder, the arresting officer may:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020((~~(6)~~)). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by the facility for a period of up to twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(b) Take the individual to a triage facility as defined in RCW 71.05.020. An individual delivered to a triage facility which has elected to operate as an involuntary facility may be held up to a period of twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(c) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW, which may include detention pursuant to RCW 71.05.153 in facilities such as evaluation and treatment facilities, emergency departments of hospitals, or any other appropriate facilities; or

(d) Release the individual upon agreement to voluntary participation in outpatient treatment.

(2) If the individual is released to the community, the mental health provider shall inform the arresting officer of the release within a reasonable period of time after the release if the arresting officer has specifically requested notification and provided contact information to the provider.

(3) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, ((~~where~~)) if available, the opinions of a mental health professional, if available, and the circumstances surrounding the commission of the alleged offense. The standards must also permit an officer to refer an individual for treatment notwithstanding the existence of one or more outstanding warrants for that individual and must address the circumstances under which such a referral is permissible. Prosecuting attorneys must provide an opportunity for the defense bar and disability community to comment on the standards before they are adopted.

(4) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a mental health treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(5) If an individual violates such agreement and the mental health treatment alternative is no longer appropriate:

(a) The mental health provider shall inform the referring law enforcement agency of the violation; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

(6) The police officer is immune from liability for any good faith conduct under this section.

**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 court:

(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~~)) inpatient competency restoration; or

(B) May alternatively order the defendant to undergo ((~~evaluation and treatment~~)) outpatient competency restoration 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.~~)) When ordering a defendant to undergo outpatient restoration, the court shall set appropriate conditions of release and shall enforce those conditions as necessary. If the court revokes outpatient conditional release and orders that the treatment continue in a facility under (a)(i)(A) of this subsection, the treatment period may be for no longer than the remaining time period authorized in the original court order, not counting time periods in which the defendant was absent from the treatment program plus any additional periods authorized by this section. The court may not issue an order to undergo outpatient competency restoration unless there is an available appropriate outpatient restoration program that has adequate space for the person at the time the order is issued.

(ii) The ninety day period for ((~~evaluation and treatment~~)) competency restoration under this subsection (1) 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.

(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) On or before expiration of the initial 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 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. No extension 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.

(4) For persons charged with a felony, at the hearing upon the expiration of the second restoration period or at the end of the first restoration period in the case of a defendant with a developmental disability, 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 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:

(i) May dismiss proceedings and 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. Unless the prosecuting attorney requests a hearing before the expiration of the twenty-four hour period, the charges shall be dismissed without prejudice.

(ii) At the hearing on whether to dismiss the proceedings, the prosecuting attorney may present evidence of a compelling state interest in pursuing competency restoration treatment for the defendant. The court may consider prior criminal history, prior history in treatment, prior history of violence, the quality and severity of the pending charges, and any history that suggests whether or not competency restoration treatment is likely to be successful. If the prosecuting attorney proves by a preponderance of the evidence that there is a compelling state interest in ordering restoration, then the court shall order competency restoration in accordance with subsection (2)(a) of this section.

(2)(a) If a court finds pursuant to subsection (1)(a)(ii) of this section that there is a compelling state interest in pursuing competency restoration treatment, then the court:

(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 treatment~~)) inpatient competency restoration;

(ii) May alternatively order the defendant to undergo ((~~evaluation and treatment~~)) outpatient competency restoration 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.~~)) When ordering a defendant to undergo outpatient restoration, the court shall set appropriate conditions of release and shall enforce those conditions as necessary. If the court revokes outpatient conditional release and orders that the treatment continue in a facility under (a)(i) of this subsection, the treatment period may be for no longer than the remaining time period authorized in the original court order. 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. The fourteen-day 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) If the proceedings are dismissed under RCW 10.77.084 and the defendant was 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) If the defendant was in custody and not on conditional release at the time of dismissal, 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)~~)) (3) If the defendant is charged with a nonfelony crime that is not a serious offense as defined in RCW 10.77.092:

The court may stay or dismiss proceedings and 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.

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