

E2SSB 5444 - H COMM AMD
By Committee on Appropriations

ADOPTED AND ENGROSSED 4/15/19

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that there has
4 been a nationwide increase in the number of individuals with
5 behavioral health disorders in the criminal justice system. The
6 legislature also recognizes that reforms must be made to our own
7 behavioral health systems and services to meet the increasing demands
8 in our state, to provide timely competency evaluations and
9 restoration services, and to comply with federal court orders issued
10 in *A.B., by and through Trueblood, et al., v. DSHS, et al.*, No.
11 15-35462 ("Trueblood"). The legislature acknowledges that these
12 reforms will require the support of a broad range of stakeholders,
13 including local law enforcement, prosecuting attorneys, defense
14 attorneys, community members, and health care providers. The
15 legislature further acknowledges the significant efforts of the
16 parties to the Trueblood litigation to establish a roadmap and
17 framework within their settlement agreement for proposed systemic
18 reforms to the forensic mental health care system. It is the intent
19 of the legislature to enact appropriate reforms consistent with the
20 goals agreed to in the Trueblood settlement agreement, to continue to
21 engage with stakeholders and community partners to address the needs
22 of this vulnerable population, and to ensure that the public safety
23 needs of our communities are met.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.77
25 RCW to read as follows:

26 (1) Subject to the limitations described in this section, a court
27 may appoint an impartial forensic navigator employed by or contracted
28 by the department to assist individuals who have been referred for
29 competency evaluation.

30 (2) A forensic navigator must assist the individual to access
31 services related to diversion and community outpatient competency

1 restoration. The forensic navigator must assist the individual,
2 prosecuting attorney, defense attorney, and the court to understand
3 the options available to the individual and be accountable as an
4 officer of the court for faithful execution of the responsibilities
5 outlined in this section.

6 (3) The duties of the forensic navigator include, but are not
7 limited to, the following:

8 (a) To collect relevant information about the individual,
9 including behavioral health services and supports available to the
10 individual that might support placement in outpatient restoration,
11 diversion, or some combination of these;

12 (b) To meet with, interview, and observe the individual;

13 (c) To present information to the court in order to assist the
14 court in understanding the treatment options available to the
15 individual to support the entry of orders for diversion from the
16 forensic mental health system or for community outpatient competency
17 restoration, and to facilitate that transition; and

18 (d) When the individual is ordered to receive community
19 outpatient restoration, to provide services to the individual
20 including:

21 (i) Assisting the individual with attending appointments and
22 classes relating to outpatient competency restoration;

23 (ii) Coordinating access to housing for the individual;

24 (iii) Meeting with the individual on a regular basis;

25 (iv) Providing information to the court concerning the
26 individual's progress and compliance with court-ordered conditions of
27 release, which may include appearing at court hearings to provide
28 information to the court;

29 (v) Coordinating the individual's access to community case
30 management services and mental health services;

31 (vi) Assisting the individual with obtaining prescribed
32 medication and encouraging adherence with prescribed medication;

33 (vii) Planning for a coordinated transition of the individual to
34 a case manager in the community behavioral health system;

35 (viii) Attempting to follow up with the individual to check
36 whether the meeting with a community-based case manager took place;

37 (ix) When the individual is a high utilizer, attempting to
38 connect the individual with high utilizer services; and

39 (x) Attempting to check up on the individual at least once per
40 month for up to sixty days after coordinated transition to community

1 behavioral health services, without duplicating the services of the
2 community-based case manager.

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

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

9 (6) The signed order for competency evaluation from the court
10 shall serve as authority for the forensic navigator to be given
11 access to all records held by a behavioral health, educational, or
12 law enforcement agency or a correctional facility that relates to an
13 individual. Information that is protected by state or federal law,
14 including health information, shall not be entered into the court
15 record without the consent of the individual or their defense
16 attorney.

17 (7) Admissions made by the individual in the course of receiving
18 services from the forensic navigator may not be used against the
19 individual in the prosecution's case in chief.

20 (8) A court may not issue an order appointing a forensic
21 navigator unless the department certifies that there is adequate
22 forensic navigator capacity to provide these services at the time the
23 order is issued.

24 **Sec. 3.** RCW 10.31.110 and 2014 c 225 s 57 are each amended to
25 read as follows:

26 (1) When a police officer has reasonable cause to believe that
27 the individual has committed acts constituting a ~~((nonfelony))~~ crime
28 ~~((that is not a serious offense as identified in RCW 10.77.092))~~, and
29 the individual is known by history or consultation with the
30 behavioral health organization, managed care organization, behavioral
31 health administrative services organization, crisis hotline, or local
32 crisis services providers to suffer from a mental disorder, in
33 addition to existing authority under state law, as an alternative to
34 arrest, the arresting officer ~~((may))~~ is authorized and encouraged
35 to:

36 (a) Take the individual to a crisis stabilization unit as defined
37 in RCW 71.05.020 ~~((+6))~~. Individuals delivered to a crisis
38 stabilization unit pursuant to this section may be held by the
39 facility for a period of up to twelve hours. The individual must be

1 examined by a mental health professional within three hours of
2 arrival;

3 (b) Take the individual to a triage facility as defined in RCW
4 71.05.020. An individual delivered to a triage facility which has
5 elected to operate as an involuntary facility may be held up to a
6 period of twelve hours. The individual must be examined by a mental
7 health professional within three hours of arrival;

8 (c) Refer the individual to a mental health professional for
9 evaluation for initial detention and proceeding under chapter 71.05
10 RCW; or

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

13 (2) If the individual is released to the community, the mental
14 health provider shall make reasonable efforts to inform the arresting
15 officer of the planned release (~~((within a reasonable period of time~~
16 ~~after the))~~ prior to release if the arresting officer has
17 specifically requested notification and provided contact information
18 to the provider.

19 (3) In deciding whether to refer the individual to treatment
20 under this section, the police officer (~~((shall))~~) must be guided by
21 (~~((standards))~~) local law enforcement diversion guidelines for
22 behavioral health developed and mutually agreed upon with the
23 prosecuting authority(~~((, which))~~) with an opportunity for consultation
24 and comment by the defense bar and disability community. These
25 guidelines must address, at a minimum, the length, seriousness, and
26 recency of the known criminal history of the individual, the mental
27 health history of the individual, (~~((where))~~) if available, the
28 opinions of a mental health professional, if available, and the
29 circumstances surrounding the commission of the alleged offense. The
30 guidelines must include a process for clearing outstanding warrants
31 or referring the individual for assistance in clearing outstanding
32 warrants, if any, and issuing a new court date, if appropriate,
33 without booking or incarcerating the individual or disqualifying him
34 or her from referral to treatment under this section, and define the
35 circumstances under which such action is permissible.

36 (4) Any agreement to participate in treatment shall not require
37 individuals to stipulate to any of the alleged facts regarding the
38 criminal activity as a prerequisite to participation in a mental
39 health treatment alternative. The agreement is inadmissible in any

1 criminal or civil proceeding. The agreement does not create immunity
2 from prosecution for the alleged criminal activity.

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

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

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

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

11 **Sec. 4.** RCW 10.77.086 and 2015 1st sp.s. c 7 s 5 are each
12 amended to read as follows:

13 (1)(a)(i) If the defendant is charged with a felony and
14 determined to be incompetent, until he or she has regained the
15 competency necessary to understand the proceedings against him or her
16 and assist in his or her own defense, but in any event for a period
17 of no longer than ninety days, the court(~~(~~

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

21 ~~(B) May alternatively order the defendant to undergo evaluation
22 and treatment at some other facility or provider as determined by the
23 department, or under the guidance and control of a professional
24 person. The facilities or providers may include community mental
25 health providers or other local facilities that contract with the
26 department and are willing and able to provide treatment under this
27 section. During the 2015-2017 fiscal biennium, the department may
28 contract with one or more cities or counties to provide competency
29 restoration services in a city or county jail if the city or county
30 jail is willing and able to serve as a location for competency
31 restoration services and if the secretary determines that there is an
32 emergent need for beds and documents the justification, including a
33 plan to address the emergency. Patients receiving competency
34 restoration services in a city or county jail must be physically
35 separated from other populations at the jail and restoration
36 treatment services must be provided as much as possible within a
37 therapeutic environment.)) for competency restoration. Based on a
38 recommendation from a forensic navigator and input from the parties,~~

1 the court may order the defendant to receive inpatient competency
2 restoration or outpatient competency restoration.

3 (A) To be eligible for an order for outpatient competency
4 restoration, a defendant must be clinically appropriate and be
5 willing to:

6 (I) Adhere to medications or receive prescribed intramuscular
7 medication; and

8 (II) Abstain from alcohol and unprescribed drugs.

9 (B) If the court orders inpatient competency restoration, the
10 department shall place the defendant in an appropriate facility of
11 the department for competency restoration.

12 (C) If the court orders outpatient competency restoration, the
13 court shall modify conditions of release as needed to authorize the
14 department to place the person in approved housing, which may include
15 access to supported housing, affiliated with a contracted outpatient
16 competency restoration program. The department, in conjunction with
17 the health care authority, must establish rules for conditions of
18 participation in the outpatient competency restoration program, which
19 must include the defendant being subject to medication management and
20 regular urinalysis testing for defendants who have a current
21 substance use disorder diagnosis. The outpatient competency
22 restoration program shall monitor the defendant during the
23 defendant's placement in the program and report any noncompliance or
24 significant changes with respect to the defendant to the department
25 and, if applicable, the forensic navigator.

26 (D) If a defendant fails to comply with the restrictions of the
27 outpatient restoration program such that restoration is no longer
28 appropriate in that setting or the defendant is no longer clinically
29 appropriate for outpatient competency restoration, the department
30 shall remove the defendant from the outpatient restoration program
31 and place the defendant instead in an appropriate facility of the
32 department for inpatient competency restoration for no longer than
33 the time allowed as if the defendant had been initially placed into
34 inpatient competency restoration, in addition to reasonable time for
35 transport to or from the facility. The department shall notify the
36 court and parties of the change in placement before the close of the
37 next judicial day. The court shall schedule a hearing within five
38 days to review the placement and conditions of release of the
39 defendant and issue appropriate orders. The standard of proof shall
40 be a preponderance of the evidence, and the court may in its

1 discretion render its decision based on written submissions, live
2 testimony, or remote testimony.

3 (E) The court may not issue an order for outpatient competency
4 restoration unless the department certifies that there is an
5 available appropriate outpatient competency restoration program that
6 has adequate space for the person at the time the order is issued or
7 the court places the defendant under the guidance and control of a
8 professional person identified in the court order.

9 (ii) The ninety day period for (~~evaluation and treatment~~)
10 competency restoration under this subsection (1) includes only the
11 time the defendant is actually at the facility and is in addition to
12 reasonable time for transport to or from the facility.

13 (b) For a defendant whose highest charge is a class C felony, or
14 a class B felony that is not classified as violent under RCW
15 9.94A.030, the maximum time allowed for the initial period of
16 commitment for competency restoration is forty-five days. The forty-
17 five day period includes only the time the defendant is actually at
18 the facility and is in addition to reasonable time for transport to
19 or from the facility.

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

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

30 (3) If the court finds by a preponderance of the evidence that a
31 defendant charged with a felony is incompetent, the court shall have
32 the option of extending the order of commitment or alternative
33 treatment for an additional period of ninety days, but the court must
34 at the time of extension set a date for a prompt hearing to determine
35 the defendant's competency before the expiration of the second
36 restoration period. The defendant, the defendant's attorney, or the
37 prosecutor has the right to demand that the hearing be before a jury.
38 No extension shall be ordered for a second or third restoration
39 period as provided in subsection (4) of this section if the
40 defendant's incompetence has been determined by the secretary to be

1 solely the result of a developmental disability which is such that
2 competence is not reasonably likely to be regained during an
3 extension. The ninety-day period includes only the time the defendant
4 is actually at the facility and is in addition to reasonable time for
5 transport to or from the facility.

6 (4) For persons charged with a felony, at the hearing upon the
7 expiration of the second restoration period or at the end of the
8 first restoration period in the case of a defendant with a
9 developmental disability, if the jury or court finds that the
10 defendant is incompetent, or if the court or jury at any stage finds
11 that the defendant is incompetent and the court determines that the
12 defendant is unlikely to regain competency, the charges shall be
13 dismissed without prejudice, and the court shall order the defendant
14 be committed to a state hospital as defined in RCW 72.23.010 for up
15 to seventy-two hours starting from admission to the facility,
16 excluding Saturdays, Sundays, and holidays, for evaluation for the
17 purpose of filing a civil commitment petition under chapter 71.05
18 RCW. The criminal charges shall not be dismissed if the court or jury
19 finds that: (a) The defendant (i) is a substantial danger to other
20 persons; or (ii) presents a substantial likelihood of committing
21 criminal acts jeopardizing public safety or security; and (b) there
22 is a substantial probability that the defendant will regain
23 competency within a reasonable period of time. In the event that the
24 court or jury makes such a finding, the court may extend the period
25 of commitment for up to an additional six months. The six-month
26 period includes only the time the defendant is actually at the
27 facility and is in addition to reasonable time for transport to or
28 from the facility.

29 **Sec. 5.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended
30 to read as follows:

31 (1) ~~((a))~~ If the defendant is charged with a nonfelony crime
32 which is a serious offense as identified in RCW 10.77.092 and found
33 by the court to be not competent, then the court:

34 (a) Shall dismiss the proceedings without prejudice and detain
35 the defendant for sufficient time to allow the designated crisis
36 responder to evaluate the defendant and consider initial detention
37 proceedings under chapter 71.05 RCW, unless the prosecutor objects to
38 the dismissal and provides notice of a motion for an order for
39 competency restoration, in which case the court shall schedule a

1 hearing within seven days to determine whether to enter an order of
2 competency restoration.

3 (b) At the hearing, the prosecuting attorney must establish that
4 there is a compelling state interest to order competency restoration
5 treatment for the defendant. The court may consider prior criminal
6 history, prior history in treatment, prior history of violence, the
7 quality and severity of the pending charges, any history that
8 suggests whether or not competency restoration treatment is likely to
9 be successful, in addition to the factors listed under RCW 10.77.092.
10 If the prosecuting attorney proves by a preponderance of the evidence
11 that there is a compelling state interest in ordering competency
12 restoration, then the court shall order competency restoration in
13 accordance with subsection (2)(a) of this section.

14 (2)(a) If a court finds pursuant to subsection (1)(b) of this
15 section that there is a compelling state interest in pursuing
16 competency restoration treatment, then the court ((-i-)) shall commit
17 the defendant to the custody of the secretary ((who shall place such
18 defendant in an appropriate facility of the department for evaluation
19 and treatment;

20 ~~(ii) May alternatively order the defendant to undergo evaluation~~
21 ~~and treatment at some other facility or provider as determined by the~~
22 ~~department, or under the guidance and control of a professional~~
23 ~~person. The facilities or providers may include community mental~~
24 ~~health providers or other local facilities that contract with the~~
25 ~~department and are willing and able to provide treatment under this~~
26 ~~section. During the 2015-2017 fiscal biennium, the department may~~
27 ~~contract with one or more cities or counties to provide competency~~
28 ~~restoration services in a city or county jail if the city or county~~
29 ~~jail is willing and able to serve as a location for competency~~
30 ~~restoration services and if the secretary determines that there is an~~
31 ~~emergent need for beds and documents the justification, including a~~
32 ~~plan to address the emergency. Patients receiving competency~~
33 ~~restoration services in a city or county jail must be physically~~
34 ~~separated from other populations at the jail and restoration~~
35 ~~treatment services must be provided as much as possible within a~~
36 ~~therapeutic environment.)) for competency restoration. Based on a~~
37 recommendation from a forensic navigator and input from the parties,
38 the court may order the defendant to receive inpatient competency
39 restoration or outpatient competency restoration.

1 (i) To be eligible for an order for outpatient competency
2 restoration, a defendant must be clinically appropriate and be
3 willing to:

4 (A) Adhere to medications or receive prescribed intramuscular
5 medication; and

6 (B) Abstain from alcohol and unprescribed drugs.

7 (ii) If the court orders inpatient competency restoration, the
8 department shall place the defendant in an appropriate facility of
9 the department for competency restoration under (b) of this
10 subsection.

11 (iii) If the court orders outpatient competency restoration, the
12 court shall modify conditions of release as needed to authorize the
13 department to place the person in approved housing, which may include
14 access to supported housing, affiliated with a contracted outpatient
15 competency restoration program. The department, in conjunction with
16 the health care authority, must establish rules for conditions of
17 participation in the outpatient competency restoration program, which
18 must include the defendant being subject to medication management and
19 regular urinalysis testing for defendants who have a current
20 substance use disorder diagnosis. The outpatient competency
21 restoration program shall monitor the defendant during the
22 defendant's placement in the program and report any noncompliance or
23 significant changes with respect to the defendant to the department
24 and, if applicable, the forensic navigator.

25 (iv) If a defendant fails to comply with the restrictions of the
26 outpatient competency restoration program such that restoration is no
27 longer appropriate in that setting or the defendant is no longer
28 clinically appropriate for outpatient competency restoration, the
29 department shall remove the defendant from the outpatient restoration
30 program. The department shall place the defendant instead in an
31 appropriate facility of the department for inpatient competency
32 restoration for no longer than twenty-nine days regardless of any
33 time spent in outpatient competency restoration, in addition to
34 reasonable time for transport to or from the facility. The department
35 shall notify the court and parties of the change in placement before
36 the close of the next judicial day. The court shall schedule a
37 hearing within five days to review the placement and conditions of
38 release of the defendant and issue appropriate orders. The standard
39 of proof shall be a preponderance of the evidence, and the court may

1 in its discretion render its decision based on written submissions,
2 live testimony, or remote testimony.

3 (v) The court may not issue an order for outpatient competency
4 restoration unless the department certifies that there is an
5 available appropriate outpatient restoration program that has
6 adequate space for the person at the time the order is issued or the
7 court places the defendant under the guidance and control of a
8 professional person identified in the court order.

9 (b) The placement under (a) (~~(i) and (ii)~~) of this subsection
10 shall not exceed (~~fourteen~~) twenty-nine days (~~(in addition to any~~
11 unused time of the evaluation under RCW 10.77.060. The court shall
12 compute this total period and include its computation in the order.
13 The ~~fourteen-day period plus any unused time of the evaluation under~~
14 RCW 10.77.060 shall)) if the defendant is ordered to receive
15 inpatient competency restoration, or shall not exceed ninety days if
16 the defendant is ordered to receive outpatient competency
17 restoration. The court may order any combination of this subsection,
18 not to exceed ninety days. This period must be considered to include
19 only the time the defendant is actually at the facility and shall be
20 in addition to reasonable time for transport to or from the
21 facility(~~(~~

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

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

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

32 ~~((e))~~ (d)(i) If the proceedings are dismissed under RCW
33 10.77.084 and the defendant was on conditional release at the time of
34 dismissal, the court shall order the designated crisis responder
35 within that county to evaluate the defendant pursuant to chapter
36 71.05 RCW. The evaluation may be conducted in any location chosen by
37 the professional.

38 (ii) If the defendant was in custody and not on conditional
39 release at the time of dismissal, the defendant shall be detained and
40 sent to an evaluation and treatment facility for up to seventy-two

1 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
2 purposes of filing a petition under chapter 71.05 RCW. The seventy-
3 two hour period shall commence upon the next nonholiday weekday
4 following the court order and shall run to the end of the last
5 nonholiday weekday within the seventy-two-hour period.

6 ~~((2))~~ (3) If the defendant is charged with a nonfelony crime
7 that is not a serious offense as defined in RCW 10.77.092:

8 The court may stay or dismiss proceedings and detain the
9 defendant for sufficient time to allow the designated crisis
10 responder to evaluate the defendant and consider initial detention
11 proceedings under chapter 71.05 RCW. The court must give notice to
12 all parties at least twenty-four hours before the dismissal of any
13 proceeding under this subsection, and provide an opportunity for a
14 hearing on whether to dismiss the proceedings."

15 Correct the title.

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