2060-S2 AMH JINK ADAM 035

**2SHB 2060** - H AMD **127**

By Representative Jinkins

**ADOPTED 03/04/2015**

On page 6, beginning on line 1, strike all of sections 3 through 5 and insert the following:

"NEW SECTION. **Sec. 3.** (1) The legislature finds that there are currently no alternatives to competency restoration provided in the state hospitals and there is insufficient capacity within the state hospitals to meet the projected service needs of the state. Subject to the availability of amounts appropriated for this specific purpose, the legislature encourages the department of social and health services to develop, on a phased-in basis, alternative locations and increased access to competency restoration services under chapter 10.77 RCW for individuals who do not require inpatient psychiatric hospitalization level services.

(2) The department shall work with counties and the courts to develop a screening process to determine which individuals are safe to receive competency restoration treatment outside the state hospitals. The department also must develop a plan to sufficiently increase capacity to meet the projected ten-year need for both forensic and civil mental health bed demand.

**Sec. 4.** RCW 10.77.086 and 2013 c 289 s 2 are each amended to read as follows:

(1)(a) 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, ((~~or has been determined unlikely to regain competency pursuant to RCW 10.77.084(1)(b),~~)) but in any event for a period of no longer than ninety days, 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; or

(ii) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person. The facilities 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, must interact only with treatment staff and not jail staff, except for incidental interaction with jail staff for custodial service, food service, or similar services, and must be provided as much as possible with a therapeutic environment. Competency restoration services provided in a city or county jail must be performed by staff and professionals who have the skills and qualifications necessary to provide competency restoration services comparable to those provided at a state hospital.

The ninety-day period for evaluation and treatment 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 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. 5.** RCW 10.77.088 and 2007 c 375 s 5 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 ((~~shall order the secretary to place the defendant~~)):

(i) ((~~At a secure mental health facility in the custody of the department or an agency designated by the department for mental health treatment and restoration of competency.~~)) 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;

(ii) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person. The facilities 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, must interact only with treatment staff and not jail staff, except for incidental interaction with jail staff for custodial service, food service, or similar services, and must be provided as much as possible with a therapeutic environment. Competency restoration services provided in a city or county jail must be performed by staff and professionals who have the skills and qualifications necessary to provide competency restoration services comparable to those provided at a state hospital.

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;

((~~(ii)~~)) (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

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

(b) If the court has determined 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 mental health professional 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) 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 mental health professional 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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|  | EFFECT:  • Adds an additional legislative finding that there is insufficient capacity within the state hospitals to meet the projected service needs of the state.  • Requires the Department to work with counties and the courts to develop a screening process to determine which individuals are safe to receive competency restoration treatment outside the state hospitals and to develop a plan to sufficiently increase capacity to meet the projected ten-year need for both forensic and civil mental health bed demand.  • Provides that competency restoration services provided in a city or county jail must be performed by staff and professionals who have the skills and qualifications necessary to provide competency restoration services comparable to those provided at a state hospital.  • Alters the requirement that patients receiving restoration treatment in a jail must interact only with treatment staff and not jail staff to allow incidental interaction with jail staff for custodial service, food service, or similar services.  • Makes clear that the 14-day restoration treatment period for a defendant charged with a misdemeanor offense applies for restoration treatment at a state hospital or at an alternative location in the community or a jail.  • Makes changes for language clarity and consistency. |

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