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SECOND ENGROSSED SECOND SUBSTITUTE SENATE BILL 5177

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State of Washington

64th Legislature

2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators O'Ban and Darneille; by request of Department of Social and Health Services)

1 AN ACT Relating to improving forensic mental health services;  
2 amending RCW 10.77.084, 10.77.086, 10.77.088, 10.77.073, 10.77.220,  
3 71.05.235, and 10.77.065; reenacting and amending RCW 10.77.065;  
4 adding new sections to chapter 10.77 RCW; creating new sections;  
5 providing effective dates; providing expiration dates; and declaring  
6 an emergency.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that there are  
9 currently no alternatives to competency restoration provided in the  
10 state hospitals. Subject to the availability of amounts appropriated  
11 for this specific purpose, the legislature encourages the department  
12 of social and health services to develop, on a phased-in basis,  
13 alternative locations and increased access to competency restoration  
14 services under chapter 10.77 RCW for individuals who do not require  
15 inpatient psychiatric hospitalization level services.

16 (2) The department of social and health services shall work with  
17 counties and the court to develop a screening process to determine  
18 which individuals are safe to receive competency restoration  
19 treatment outside the state hospitals.

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

3        Within twenty-four hours of the signing of a court order  
4    requesting the secretary to provide a competency evaluation or  
5    competency restoration treatment:

6        (1) The clerk of the court shall provide the court order and the  
7    charging documents, including the request for bail and certification  
8    of probable cause, to the state hospital. If the order is for  
9    competency restoration treatment and the competency evaluation was  
10   provided by a qualified expert or professional person who was not  
11   designated by the secretary, the clerk shall also provide the state  
12   hospital with a copy of all previous court orders related to  
13   competency or criminal insanity and a copy of any of the evaluation  
14   reports;

15        (2) The prosecuting attorney shall provide the discovery packet,  
16   including a statement of the defendant's criminal history, to the  
17   state hospital; and

18        (3) If the court order requires transportation of the defendant  
19   to a state hospital, the jail administrator shall provide the  
20   defendant's medical clearance information to the state hospital  
21   admission staff.

22        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 10.77  
23   RCW to read as follows:

24        (1) A city or county jail shall transport a defendant to a state  
25   hospital or other secure facility designated by the department within  
26   one day of receipt of an offer of admission of the defendant for  
27   competency evaluation or restoration services.

28        (2) City and county jails must cooperate with competency  
29   evaluators and the department to arrange for competency evaluators to  
30   have reasonable, timely, and appropriate access to defendants for the  
31   purpose of performing evaluations under this chapter to accommodate  
32   the seven-day performance target for completing competency  
33   evaluations for defendants in custody.

34        **Sec. 4.**    RCW 10.77.084 and 2012 c 256 s 5 are each amended to  
35   read as follows:

36        (1)(a) If at any time during the pendency of an action and prior  
37   to judgment the court finds, following a report as provided in RCW  
38   10.77.060, a defendant is incompetent, the court shall order the

1 proceedings against the defendant be stayed except as provided in  
2 subsection (4) of this section.

3 (b) The court may order a defendant who has been found to be  
4 incompetent to undergo competency restoration treatment at a facility  
5 designated by the department if the defendant is eligible under RCW  
6 10.77.086 or 10.77.088. At the end of (~~the mental health treatment~~  
7 and)) each competency restoration period(~~(, if any,)~~) or at any time  
8 a professional person determines competency has been, or is unlikely  
9 to be, restored, the defendant shall be returned to court for a  
10 hearing(~~(-)~~), except that if the opinion of the professional person  
11 is that the defendant remains incompetent and the hearing is held  
12 before the expiration of the current competency restoration period,  
13 the parties may agree to waive the defendant's presence (~~(or)~~),  
14 to remote participation by the defendant at a hearing,  
15 or to presentation of an agreed order (~~(if the recommendation of the~~  
16 evaluator is for the continuation of the stay of criminal  
17 proceedings, or if the opinion of the evaluator is that the defendant  
18 remains incompetent and there is no remaining restoration period, and  
19 the hearing is held prior to expiration of the defendant's authorized  
20 period of commitment, in which case)) in lieu of a hearing. The  
21 (~~department~~) facility shall promptly notify the court and all  
22 parties of the date (~~(of the defendant's admission and expiration of~~  
23 commitment)) on which the competency restoration period commences and  
24 expires so that a timely hearing date may be scheduled.

25 (c) If, (~~after~~) following notice and hearing(~~(-)~~) or entry of  
26 an agreed order under (b) of this subsection, the court finds that  
27 competency has been restored, the court shall lift the stay entered  
28 under (a) of this subsection (~~(shall be lifted)~~). If the court finds  
29 that competency has not been restored, the court shall dismiss the  
30 proceedings (~~(shall be dismissed)~~) without prejudice(~~(. If the court~~  
31 concludes that competency has not been restored, but)), except that  
32 the court may order a further period of competency restoration  
33 treatment if it finds that further treatment within the time limits  
34 established by RCW 10.77.086 or 10.77.088 is likely to restore  
35 competency, (~~(the court may order that treatment for purposes of~~  
36 competency restoration be continued. Such treatment may not extend  
37 beyond the combination of time provided for in)) and a further period  
38 of treatment is allowed under RCW 10.77.086 or 10.77.088.

39 (~~(e)~~) (d) If at any time during the proceeding the court finds,  
40 following notice and hearing, a defendant is not likely to regain

1 competency, the court shall dismiss the proceedings (~~shall be~~  
2 ~~dismissed~~) without prejudice and refer the defendant (~~shall be~~  
3 ~~evaluated~~) for civil commitment evaluation or proceedings if  
4 appropriate under RCW 10.77.065, 10.77.086, or 10.77.088.

5 (2) If the defendant is referred for evaluation by a designated  
6 mental health professional under this chapter, the designated mental  
7 health professional shall provide prompt written notification of the  
8 results of the evaluation and whether the person was detained. The  
9 notification shall be provided to the court in which the criminal  
10 action was pending, the prosecutor, the defense attorney in the  
11 criminal action, and the facility that evaluated the defendant for  
12 competency.

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

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

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

33 **Sec. 5.** RCW 10.77.086 and 2013 c 289 s 2 are each amended to  
34 read as follows:

35 (1)(a)(i) If the defendant is charged with a felony and  
36 determined to be incompetent, until he or she has regained the  
37 competency necessary to understand the proceedings against him or her  
38 and assist in his or her own defense, (~~or has been determined~~

1 ~~unlikely to regain competency pursuant to RCW 10.77.084(1)(b),~~) but  
2 in any event for a period of no longer than ninety days, the court:

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

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

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

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

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

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

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

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

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

4 **Sec. 6.** RCW 10.77.088 and 2007 c 375 s 5 are each amended to  
5 read as follows:

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

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

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

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

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

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

11        (c)(i) If the proceedings are dismissed under RCW 10.77.084 and  
12 the defendant was on conditional release at the time of dismissal,  
13 the court shall order the designated mental health professional  
14 within that county to evaluate the defendant pursuant to chapter  
15 71.05 RCW. The evaluation may be conducted in any location chosen by  
16 the professional.

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

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

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

34        **Sec. 7.** RCW 10.77.073 and 2013 c 284 s 1 are each amended to  
35 read as follows:

36        (1) The department shall reimburse a county for the cost of  
37 appointing a qualified expert or professional person under RCW  
38 10.77.060(1)(a) subject to subsections (2) through (4) of this  
39 section if, at the time of a referral for an evaluation of competency

1 to stand trial in a jail for an in-custody defendant, the department  
2 (~~has not met~~): (a) During the most recent quarter, did not perform  
3 at least one-third of the number of jail-based competency evaluations  
4 for in-custody defendants as were performed by qualified experts or  
5 professional persons appointed by the court in the referring county;  
6 or (b) did not meet the performance target for timely completion of  
7 competency evaluations under RCW 10.77.068(1)(a)(~~(ii)~~) (iii) during  
8 the most recent quarter in fifty percent of cases submitted by the  
9 referring county, as documented in the most recent quarterly report  
10 under RCW 10.77.068(3) or confirmed by records maintained by the  
11 department(~~, the department shall reimburse the county for the cost~~  
12 ~~of appointing a qualified expert or professional person under RCW~~  
13 ~~10.77.060(1)(a) subject to subsections (2) and (3) of this section)~~).

14 (2) Appointment of a qualified expert or professional person  
15 under this section must be from a list of qualified experts or  
16 professional persons assembled with participation by representatives  
17 of the prosecuting attorney and the defense bar of the county. The  
18 qualified expert or professional person shall complete an evaluation  
19 and report that includes the components specified in RCW  
20 10.77.060(3).

21 (3) The county shall provide a copy of the evaluation report to  
22 the applicable state hospital upon referral of the defendant for  
23 admission to the state hospital. The county shall (~~maintain data on~~  
24 ~~the timeliness of competency evaluations completed under this~~  
25 ~~section)~~):

26 (a) In consultation with the department, develop and maintain  
27 critical data elements, including data on the timeliness of  
28 competency evaluations completed under this section; and

29 (b) Share this data with the department upon the department's  
30 request.

31 (4) A qualified expert or professional person appointed by a  
32 court under this section must be compensated for competency  
33 evaluations in an amount that will encourage in-depth evaluation  
34 reports. Subject to the availability of amounts appropriated for this  
35 specific purpose, the department shall reimburse the county in an  
36 amount determined by the department to be fair and reasonable with  
37 the county paying any excess costs. The amount of reimbursement  
38 established by the department must at least meet the equivalent  
39 amount for evaluations conducted by the department.

1 ((4)-(5)) (5) Nothing in this section precludes either party  
2 from objecting to the appointment of an evaluator on the basis that  
3 an inpatient evaluation is appropriate under RCW 10.77.060(1)(d).

4 ((5)-(6)) (6) This section expires June 30, ((2016)) 2019.

5 **Sec. 8.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to  
6 read as follows:

7 No person who is criminally insane confined pursuant to this  
8 chapter shall be incarcerated in a state correctional institution or  
9 facility(~~(: PROVIDED, That nothing herein shall prohibit)~~). This  
10 section does not apply to confinement in a mental health facility  
11 located wholly within a correctional institution. Confinement of a  
12 person who is criminally insane in a county jail or other local  
13 facility while awaiting either placement in a treatment program or a  
14 court hearing pursuant to this chapter is permitted for no more than  
15 seven days.

16 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.77  
17 RCW to read as follows:

18 (1) If the issue of competency to stand trial is raised by the  
19 court or a party under RCW 10.77.060, the prosecutor may continue  
20 with the competency process or dismiss the charges without prejudice  
21 and refer the defendant for assessment by a mental health  
22 professional, chemical dependency professional, or developmental  
23 disabilities professional to determine the appropriate service needs  
24 for the defendant.

25 (2) This section does not apply to defendants with a current  
26 charge or prior conviction for a violent offense or sex offense as  
27 defined in RCW 9.94A.030, or a violation of RCW 9A.36.031(1) (d),  
28 (f), or (h).

29 NEW SECTION. **Sec. 10.** A new section is added to chapter 10.77  
30 RCW to read as follows:

31 (1) In order to prioritize goals of accuracy, prompt service to  
32 the court, quality assurance, and integration with other services, an  
33 office of forensic mental health services is established within the  
34 department of social and health services. The office shall be led by  
35 a director on at least the level of deputy assistant secretary within  
36 the department who shall, after a reasonable period of transition,  
37 have responsibility for the following functions:

1 (a) Operational control of all forensic evaluation services,  
2 including specific budget allocation;

3 (b) Responsibility for training forensic evaluators;

4 (c) Development of a system to certify forensic evaluators, and  
5 to monitor the quality of forensic evaluation reports;

6 (d) Liaison with courts, jails, and community mental health  
7 programs to ensure proper flow of information, coordinate logistical  
8 issues, and solve problems in complex circumstances;

9 (e) Coordination with state hospitals to identify and develop  
10 best practice interventions and curricula for services that are  
11 unique to forensic patients;

12 (f) Promotion of congruence across state hospitals where  
13 appropriate, and promotion of interventions that flow smoothly into  
14 community interventions;

15 (g) Coordination with regional support networks, behavioral  
16 health organizations, community mental health agencies, and the  
17 department of corrections regarding community treatment and  
18 monitoring of persons on conditional release;

19 (h) Oversight of forensic data collection and analysis statewide,  
20 and appropriate dissemination of data trends and recommendations; and

21 (i) Oversight of the development, implementation, and maintenance  
22 of community forensic programs and services.

23 (2) The office of forensic mental health services must have a  
24 clearly delineated budget separate from the overall budget for state  
25 hospital services.

26 NEW SECTION. **Sec. 11.** A new section is added to chapter 10.77  
27 RCW to read as follows:

28 The secretary shall adopt rules as may be necessary to implement  
29 chapter . . . , Laws of 2015 1st sp. sess. (this act).

30 NEW SECTION. **Sec. 12.** By December 31, 2015, the administrative  
31 office of the courts shall develop and prepare standard forms for  
32 court orders for: (1) Forensic evaluation and competency restoration  
33 services under chapter 10.77 RCW; and (2) involuntary civil  
34 commitment under chapter 71.05 RCW. In developing the standard court  
35 order forms, the administrative office of the courts shall consult  
36 with representatives from the superior courts and county clerks, the  
37 department of social and health services including the state  
38 hospitals, the attorney general's office, prosecuting attorneys,

1 defense attorneys, the Washington state association of counties,  
2 disability rights Washington, and tribal and community mental health  
3 groups.

4 NEW SECTION. **Sec. 13.** There is established a court video  
5 testimony work group, to be composed of representatives from the  
6 administrative office of the courts, the superior courts, the  
7 department of social and health services including the state  
8 hospitals, prosecuting attorneys, defense attorneys, the Washington  
9 state association of counties, the attorney general's office, and  
10 disability rights Washington. The purpose of the work group is to  
11 consider and facilitate the use of video testimony by state  
12 competency evaluators and other representatives of the department of  
13 social and health services and the state hospitals in court matters  
14 under chapter 10.77 RCW. The work group must consider the  
15 applicability of local rules and the confrontation rights of the  
16 defendant. The administrative office of the courts is requested to  
17 convene and provide staffing to the work group. The work group must  
18 complete its work by June 30, 2016.

19 **Sec. 14.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to  
20 read as follows:

21 (1) If an individual is referred to a designated mental health  
22 professional under RCW 10.77.088(1)((~~b~~)) (c)(i), the designated  
23 mental health professional shall examine the individual within forty-  
24 eight hours. If the designated mental health professional determines  
25 it is not appropriate to detain the individual or petition for a  
26 ninety-day less restrictive alternative under RCW 71.05.230(4), that  
27 decision shall be immediately presented to the superior court for  
28 hearing. The court shall hold a hearing to consider the decision of  
29 the designated mental health professional not later than the next  
30 judicial day. At the hearing the superior court shall review the  
31 determination of the designated mental health professional and  
32 determine whether an order should be entered requiring the person to  
33 be evaluated at an evaluation and treatment facility. No person  
34 referred to an evaluation and treatment facility may be held at the  
35 facility longer than seventy-two hours.

36 (2) If an individual is placed in an evaluation and treatment  
37 facility under RCW 10.77.088(1)((~~b~~)) (c)(ii), a professional person  
38 shall evaluate the individual for purposes of determining whether to

1 file a ninety-day inpatient or outpatient petition under chapter  
2 71.05 RCW. Before expiration of the seventy-two hour evaluation  
3 period authorized under RCW 10.77.088(1)((~~b~~)) (c)(ii), the  
4 professional person shall file a petition or, if the recommendation  
5 of the professional person is to release the individual, present his  
6 or her recommendation to the superior court of the county in which  
7 the criminal charge was dismissed. The superior court shall review  
8 the recommendation not later than forty-eight hours, excluding  
9 Saturdays, Sundays, and holidays, after the recommendation is  
10 presented. If the court rejects the recommendation to unconditionally  
11 release the individual, the court may order the individual detained  
12 at a designated evaluation and treatment facility for not more than a  
13 seventy-two hour evaluation and treatment period and direct the  
14 individual to appear at a surety hearing before that court within  
15 seventy-two hours, or the court may release the individual but direct  
16 the individual to appear at a surety hearing set before that court  
17 within eleven days, at which time the prosecutor may file a petition  
18 under this chapter for ninety-day inpatient or outpatient treatment.  
19 If a petition is filed by the prosecutor, the court may order that  
20 the person named in the petition be detained at the evaluation and  
21 treatment facility that performed the evaluation under this  
22 subsection or order the respondent to be in outpatient treatment. If  
23 a petition is filed but the individual fails to appear in court for  
24 the surety hearing, the court shall order that a mental health  
25 professional or peace officer shall take such person or cause such  
26 person to be taken into custody and placed in an evaluation and  
27 treatment facility to be brought before the court the next judicial  
28 day after detention. Upon the individual's first appearance in court  
29 after a petition has been filed, proceedings under RCW 71.05.310 and  
30 71.05.320 shall commence. For an individual subject to this  
31 subsection, the prosecutor or professional person may directly file a  
32 petition for ninety-day inpatient or outpatient treatment and no  
33 petition for initial detention or fourteen-day detention is required  
34 before such a petition may be filed.

35 The court shall conduct the hearing on the petition filed under  
36 this subsection within five judicial days of the date the petition is  
37 filed. The court may continue the hearing upon the written request of  
38 the person named in the petition or the person's attorney, for good  
39 cause shown, which continuance shall not exceed five additional  
40 judicial days. If the person named in the petition requests a jury

1 trial, the trial shall commence within ten judicial days of the date  
2 of the filing of the petition. The burden of proof shall be by clear,  
3 cogent, and convincing evidence and shall be upon the petitioner. The  
4 person shall be present at such proceeding, which shall in all  
5 respects accord with the constitutional guarantees of due process of  
6 law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

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

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

20 (4) The individual shall have the rights specified in RCW  
21 71.05.360 (8) and (9).

22 **Sec. 15.** RCW 10.77.065 and 2014 c 10 s 3 are each amended to  
23 read as follows:

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

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

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

14 (iv) If there is no professional person at the local correctional  
15 facility, the local correctional facility shall designate a  
16 professional person as defined in RCW 71.05.020 or, in cooperation  
17 with the regional support network, a professional person at the  
18 regional support network to receive the report and recommendation.

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

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

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

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

39 (4) A facility conducting a civil commitment evaluation under RCW  
40 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a

1 determination to release the person instead of filing a civil  
2 commitment petition must provide written notice to the prosecutor and  
3 defense attorney at least twenty-four hours prior to release. The  
4 notice may be given by electronic mail, facsimile, or other means  
5 reasonably likely to communicate the information immediately.

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

11 **Sec. 16.** RCW 10.77.065 and 2014 c 225 s 59 and 2014 c 10 s 3 are  
12 each reenacted and amended to read as follows:

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

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

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

1 medication and an involuntary medication order by the court has not  
2 been entered.

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

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

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

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

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

29 (4) A facility conducting a civil commitment evaluation under RCW  
30 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a  
31 determination to release the person instead of filing a civil  
32 commitment petition must provide written notice to the prosecutor and  
33 defense attorney at least twenty-four hours prior to release. The  
34 notice may be given by electronic mail, facsimile, or other means  
35 reasonably likely to communicate the information immediately.

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

1        NEW SECTION.    **Sec. 17.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 18.**    Section 15 of this act expires April 1,  
6 2016.

7        NEW SECTION.    **Sec. 19.**    (1) Section 7 of this act is necessary  
8 for the immediate preservation of the public peace, health, or  
9 safety, or support of the state government and its existing public  
10 institutions, and takes effect immediately.

11        (2) Sections 1 through 6 and 8 through 15 of this act are  
12 necessary for the immediate preservation of the public peace, health,  
13 or safety, or support of the state government and its existing public  
14 institutions, and take effect July 1, 2015.

15        (3) Section 16 of this act takes effect April 1, 2016.

16        NEW SECTION.    **Sec. 20.**    Section 1, chapter 253, Laws of 2015 is  
17 necessary for the immediate preservation of the public peace, health,  
18 or safety, or support of the state government and its existing public  
19 institutions, and takes effect June 30, 2015.

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