CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE SENATE BILL 5664**

Chapter 288, Laws of 2022

(partial veto)

67th Legislature

2022 Regular Session

FORENSIC COMPETENCY RESTORATION PROGRAMS—VARIOUS PROVISIONS

EFFECTIVE DATE: June 9, 2022

|  |  |
| --- | --- |
| Passed by the Senate March 7, 2022  Yeas 49 Nays 0  DENNY HECK  **President of the Senate**  Passed by the House March 3, 2022  Yeas 97 Nays 1  LAURIE JINKINS  **Speaker of the House of Representatives** | CERTIFICATE  I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5664** as passed by the Senate and the House of Representatives on the dates hereon set forth.  SARAH BANNISTER  Secretary |
| Approved March 31, 2022 4:55 PM with the exception of section 9, which is vetoed. | April 1, 2022 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SECOND SUBSTITUTE SENATE BILL 5664**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Dhingra, Keiser, and Nobles)

AN ACT Relating to forensic competency restoration programs; amending RCW 10.77.060, 10.77.068, 10.77.086, 10.77.088, and 10.77.250; reenacting and amending RCW 10.77.010; adding new sections to chapter 10.77 RCW; and declaring an emergency.

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

**Sec.**  RCW 10.77.010 and 2021 c 263 s 9 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025.

(4) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(5) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(6) "Department" means the state department of social and health services.

(7) "Designated crisis responder" has the same meaning as provided in RCW 71.05.020.

(8) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(9) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(10) "Developmental disability" means the condition as defined in RCW 71A.10.020(5).

(11) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(12) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(13) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(14) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(15) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(16) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(17) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(18) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(19) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; ((~~or~~))

(c) A psychiatric advanced registered nurse practitioner, as defined in RCW 71.05.020; or

(d) A social worker with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(20) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(21) "Secretary" means the secretary of the department of social and health services or his or her designee.

(22) "Treatment" means any currently standardized medical or mental health procedure including medication.

(23) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others.

(24) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110.

(25) "Authority" means the Washington state health care authority.

**Sec.**  RCW 10.77.060 and 2021 c 263 s 5 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate a qualified expert or professional person, who shall be approved by the prosecuting attorney, to evaluate and report upon the mental condition of the defendant.

(b) The signed order of the court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. If the court is advised by any party that the defendant may have a developmental disability, the evaluation must be performed by a developmental disabilities professional and the evaluator shall have access to records of the developmental disabilities administration of the department.

(c) The evaluator shall assess the defendant in a jail, detention facility, in the community, or in court to determine whether a period of inpatient commitment will be necessary to complete an accurate evaluation. If inpatient commitment is needed, the signed order of the court shall serve as authority for the evaluator to request the jail or detention facility to transport the defendant to a hospital or secure mental health facility for a period of commitment not to exceed fifteen days from the time of admission to the facility. Otherwise, the evaluator shall complete the evaluation.

(d) The court may commit the defendant for evaluation to a hospital or secure mental health facility without an assessment if: (i) The defendant is charged with murder in the first or second degree; (ii) the court finds that it is more likely than not that an evaluation in the jail will be inadequate to complete an accurate evaluation; or (iii) the court finds that an evaluation outside the jail setting is necessary for the health, safety, or welfare of the defendant. The court shall not order an initial inpatient evaluation for any purpose other than a competency evaluation.

(e) The order shall indicate whether, in the event the defendant is committed to a hospital or secure mental health facility for evaluation, all parties agree to waive the presence of the defendant or to the defendant's remote participation at a subsequent competency hearing or presentation of an agreed order if the recommendation of the evaluator is for continuation of the stay of criminal proceedings, or if the opinion of the evaluator is that the defendant remains incompetent and there is no remaining restoration period, and the hearing is held prior to the expiration of the authorized commitment period.

(f) When a defendant is ordered to be evaluated under this subsection (1), or when a party or the court determines at first appearance that an order for evaluation under this subsection will be requested or ordered if charges are pursued, the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the evaluator regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the evaluation authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the evaluation shall include the following:

(a) A description of the nature of the evaluation;

(b) A diagnosis or description of the current mental status of the defendant;

(c) If the defendant suffers from a mental disease or defect, or has a developmental disability, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, and an evaluation and report by an expert or professional person has been provided concluding that the defendant was criminally insane at the time of the alleged offense, an opinion as to the defendant's sanity at the time of the act, and an opinion as to whether the defendant presents a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, provided that no opinion shall be rendered under this subsection (3)(d) unless the evaluator or court determines that the defendant is competent to stand trial;

(e) When directed by the court, if an evaluation and report by an expert or professional person has been provided concluding that the defendant lacked the capacity at the time of the offense to form the mental state necessary to commit the charged offense, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a designated crisis responder under chapter 71.05 RCW.

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

(5) In the event that a person remains in jail more than 21 days after service on the department of a court order to transport the person to a facility designated by the department for inpatient competency restoration treatment, upon the request of any party and with notice to all parties, the department shall perform a competency to stand trial status check to determine if the circumstances of the person have changed such that the court should authorize an updated competency evaluation. The status update shall be provided to the parties and the court. Status updates may be provided at reasonable intervals.

**Sec.**  RCW 10.77.068 and 2015 c 5 s 1 are each amended to read as follows:

(1)(a) The legislature establishes ((~~the following~~)) a performance ((~~targets and maximum time limits for the timeliness of the completion of accurate and reliable evaluations of competency to stand trial and admissions for inpatient restoration services related to competency to proceed or stand trial for adult criminal defendants.~~)) target of seven days or fewer to extend an offer of admission to a defendant in pretrial custody for inpatient competency evaluation or inpatient competency restoration services, when access to the services is legally authorized;

(b) The legislature establishes a performance target of 14 days or fewer for the following services related to competency to stand trial, when access to the services is legally authorized:

(i) To complete a competency evaluation in jail and distribute the evaluation report; and

(ii) To extend an offer of admission to a defendant ordered to be committed to a state hospital following dismissal of charges based on incompetency to stand trial under RCW 10.77.086.

(c) The legislature establishes a performance target of 21 days or fewer to complete a competency evaluation in the community and distribute the evaluation report.

(2)(a) A maximum time limit of seven days as measured from the department's receipt of the court order, or a maximum time limit of 14 days as measured from signature of the court order, whichever is shorter, is established to complete the services specified in subsection (1)(a) of this section, subject to the limitations under subsection (9) of this section.

(b) A maximum time limit of 14 days as measured from the department's receipt of the court order, or a maximum time limit of 21 days as measured from signature of the court order, whichever is shorter, is established to complete the services specified in subsection (1)(b) of this section, subject to the limitations under subsection (9) of this section.

(3) The legislature recognizes that these targets may not be achievable in all cases ((~~without compromise to the quality of competency evaluation and restoration services~~)), but intends for the department to manage, allocate, and request appropriations for resources in order to meet these targets whenever possible without sacrificing the accuracy and quality of competency ((~~evaluations and restorations, and to otherwise make sustainable improvements and track performance related to the timeliness of competency services:~~

~~(i) For a state hospital to extend an offer of admission to a defendant in pretrial custody for legally authorized evaluation services related to competency, or to extend an offer of admission for legally authorized services following dismissal of charges based on incompetence to proceed or stand trial:~~

~~(A) A performance target of seven days or less; and~~

~~(B) A maximum time limit of fourteen days;~~

~~(ii) For a state hospital to extend an offer of admission to a defendant in pretrial custody for legally authorized inpatient restoration treatment related to competency:~~

~~(A) A performance target of seven days or less; and~~

~~(B) A maximum time limit of fourteen days;~~

~~(iii) For completion of a competency evaluation in jail and distribution of the evaluation report for a defendant in pretrial custody:~~

~~(A) A performance target of seven days or less; and~~

~~(B) A maximum time limit of fourteen days, plus an additional seven-day extension if needed for clinical reasons to complete the evaluation at the determination of the department;~~

~~(iv) For completion of a competency evaluation in the community and distribution of the evaluation report for a defendant who is released from custody and makes a reasonable effort to cooperate with the evaluation, a performance target of twenty-one days or less~~)) services.

((~~(b) The time periods measured in these performance targets and maximum time limits shall run from the date on which the state hospital receives the court referral and charging documents, discovery, police reports, the names and addresses of the attorneys for the defendant and state or county, the name of the judge ordering the evaluation, information about the alleged crime, and criminal history information related to the defendant. The maximum time limits in (a) of this subsection shall be phased in over a one-year period beginning July 1, 2015, in a manner that results in measurable incremental progress toward meeting the time limits over the course of the year.~~

~~(c)~~)) (4) It shall be a defense to an allegation that the department has exceeded the maximum time limits for completion of competency services described in ((~~(a) of this~~)) subsection (2) of this section if the department can demonstrate by a preponderance of the evidence that the reason for exceeding the maximum time limits was outside of the department's control including, but not limited to, the following circumstances:

((~~(i)~~)) (a) Despite a timely request, the department has not received necessary medical ((~~clearance~~)) information regarding the current medical status of a defendant ((~~in pretrial custody for the purposes of admission to a state hospital~~));

((~~(ii)~~)) (b) The individual circumstances of the defendant make accurate completion of an evaluation of competency to ((~~proceed or~~)) stand trial dependent upon review of mental health, substance use disorder, or medical history information which is in the custody of a third party and cannot be immediately obtained by the department((~~. Completion of a competency evaluation~~)), provided that completion shall not be postponed for procurement of ((~~mental health, substance use disorder, or medical history~~)) information which is merely supplementary ((~~to the competency determination~~));

((~~(iii)~~)) (c) Additional time is needed for the defendant to no longer show active signs and symptoms of impairment related to substance use so that an accurate evaluation may be completed;

(d) The defendant is medically unavailable for competency evaluation or admission to a facility for competency restoration;

(e) Completion of the referral ((~~is frustrated by lack of~~)) requires additional time to accommodate the availability or participation ((~~by~~)) of counsel, ((~~jail or~~)) court personnel, interpreters, or the defendant;

((~~(iv) The department does not have access to appropriate private space to conduct a competency evaluation for a defendant in pretrial custody;~~

~~(v)~~)) (f) The defendant asserts legal rights that result in a delay in the provision of competency services; or

((~~(vi)~~)) (g) An unusual spike in the receipt of evaluation referrals or in the number of defendants requiring restoration services has occurred, causing temporary delays until the unexpected excess demand for competency services can be resolved.

((~~(2)~~)) (5) The department shall provide written notice to the court when it will not be able to meet the maximum time limits under subsection (2) of this section and identify the reasons for the delay and provide a reasonable estimate of the time necessary to complete the competency service. Good cause for an extension for the additional time estimated by the department shall be presumed absent a written response from the court or a party received by the department within seven days.

(6) The department shall:

(a) Develop, document, and implement procedures to monitor the clinical status of defendants admitted to a state hospital for competency services that allow the state hospital to accomplish early discharge for defendants for whom clinical objectives have been achieved or may be achieved before expiration of the commitment period;

(b) Investigate the extent to which patients admitted to a state hospital under this chapter overstay time periods authorized by law and take reasonable steps to limit the time of commitment to authorized periods; and

(c) Establish written standards for the productivity of forensic evaluators and utilize these standards to internally review the performance of forensic evaluators.

((~~(3)~~)) (7) Following any quarter in which a state hospital has failed to meet one or more of the performance targets or maximum time limits ((~~in~~)) under subsection (1) or (2) of this section ((~~after full implementation of the performance target or maximum time limit~~)), the department shall report to the executive and the legislature the extent of this deviation and describe any corrective action being taken to improve performance. This report ((~~must~~)) shall be made publicly available. An average may be used to determine timeliness under this subsection.

((~~(4) Beginning December 1, 2013, the~~)) (8) The department shall report annually to the legislature and the executive on the timeliness of services related to competency to ((~~proceed or~~)) stand trial and the timeliness with which court referrals accompanied by charging documents, discovery, and criminal history information are provided to the department relative to the signature date of the court order. The report must be in a form that is accessible to the public and that breaks down performance by county.

((~~(5)~~)) (9) This section does not create any new entitlement or cause of action related to the timeliness of competency ((~~evaluations or admission for inpatient restoration~~)) to stand trial services ((~~related to competency to proceed or stand trial~~)), nor can it form the basis for contempt sanctions under chapter 7.21 RCW or a motion to dismiss criminal charges.

**Sec.**  RCW 10.77.086 and 2019 c 326 s 4 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~~)) 90 days, the court shall commit the defendant to the custody of the secretary for inpatient competency restoration((~~. Based~~)), or may alternatively order the defendant to receive outpatient competency restoration based on a recommendation from a forensic navigator and input from the parties((~~, the court may order the defendant to receive inpatient competency restoration or outpatient competency restoration~~)).

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

((~~(I)~~)) (i) Adhere to medications or receive prescribed intramuscular medication; ((~~and~~

~~(II)~~)) (ii) Abstain from alcohol and unprescribed drugs; and

(iii) Comply with urinalysis or breathalyzer monitoring if needed.

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

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

((~~(D)~~)) (d) If a defendant fails to comply with the restrictions of the outpatient restoration program such that restoration is no longer appropriate in that setting or the defendant is no longer clinically appropriate for outpatient competency restoration, the ((~~department shall remove the defendant from the outpatient restoration program and place the defendant instead~~)) director of the outpatient competency restoration program shall notify the authority and the department of the need to terminate the outpatient competency restoration placement and intent to request placement for the defendant in an appropriate facility of the department for inpatient competency restoration ((~~for no longer than the time allowed as if the defendant had been initially placed into inpatient competency restoration, in addition to reasonable time for transport to or from the facility~~)). The outpatient competency restoration program shall coordinate with the authority, the department, and any law enforcement personnel under (d)(i) of this subsection to ensure that the time period between termination and admission into the inpatient facility is as minimal as possible. The time period for inpatient competency restoration shall be reduced by the time period spent in active treatment within the outpatient competency restoration program, excluding time periods in which the defendant was absent from the program and all time from notice of termination of the outpatient competency restoration period through the defendant's admission to the facility. The department shall obtain a placement for the defendant within seven days of the notice of intent to terminate the outpatient competency restoration placement.

(i) The department may authorize a peace officer to detain the defendant into emergency custody for transport to the designated inpatient competency restoration facility. If medical clearance is required by the designated competency restoration facility before admission, the peace officer must transport the defendant to a crisis stabilization unit, evaluation and treatment facility, emergency department of a local hospital, or triage facility for medical clearance once a bed is available at the designated inpatient competency restoration facility. The signed outpatient competency restoration order of the court shall serve as authority for the detention of the defendant under this subsection. This subsection does not preclude voluntary transportation of the defendant to a facility for inpatient competency restoration or for medical clearance, or authorize admission of the defendant into jail.

(ii) The department shall notify the court and parties of the ((~~change in placement~~)) defendant's admission for inpatient competency restoration before the close of the next judicial day. The court shall schedule a hearing within five days to review the ((~~placement and~~)) conditions of release of the defendant and anticipated release from treatment and issue appropriate orders. ((~~The standard of proof shall be a preponderance of the evidence, and the court may in its discretion render its decision based on written submissions, live testimony, or remote testimony.~~

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

((~~(ii) The ninety day period for 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)~~)) (2) 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 competency restoration period ((~~of commitment for competency restoration~~)) is ((~~forty-five~~)) 45 days if the defendant is referred for inpatient competency restoration, or 90 days if the defendant is referred for outpatient competency restoration, provided that if the outpatient competency restoration placement is terminated and the defendant is subsequently admitted to an inpatient facility, the period of inpatient treatment during the first competency restoration period under this subsection shall not exceed 45 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)~~)) (3) If the court determines or the parties agree before the initial competency restoration period or at any subsequent stage of the proceedings that the defendant is unlikely to regain competency, the court may dismiss the charges without prejudice without ordering the defendant to undergo an initial or further period of competency restoration treatment, in which case the court shall order that the defendant be referred for evaluation for civil commitment in the manner provided in subsection ((~~(4)~~)) (5) of this section.

((~~(2)~~)) (4) On or before expiration of the initial competency restoration period ((~~of commitment under subsection (1) of this section~~)) the court shall conduct a hearing((~~, at which it shall~~)) to determine whether ((~~or not~~)) the defendant is ((~~incompetent. (3)~~)) now competent to stand trial. If the court finds by a preponderance of the evidence that ((~~a~~)) the defendant ((~~charged with a felony~~)) is incompetent to stand trial, the court ((~~shall have the option of extending the~~)) may order ((~~of commitment or alternative treatment~~)) an extension of the competency restoration period for an additional period of ((~~ninety~~)) 90 days, but the court must at the same time ((~~of extension~~)) set a date for a ((~~prompt~~)) new hearing to determine the defendant's competency to stand trial before the expiration of ((~~the~~)) this second restoration period. The defendant, the defendant's attorney, ((~~or~~)) and the prosecutor ((~~has~~)) have the right to demand that the hearing be before a jury. No extension shall be ordered for a second or third competency 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~~))

(5) At the hearing upon the expiration of the second competency restoration period, or at the end of the first competency restoration period ((~~in the case of a~~)) if the defendant ((~~with a developmental disability~~)) is ineligible for a second or third competency restoration period under subsection (4) of this section, if the jury or court finds that the defendant is incompetent((~~, or if the court or jury at any stage finds that the defendant is incompetent and the court determines that the defendant is unlikely to regain competency, the charges shall be dismissed~~)) to stand trial, the court shall dismiss the charges without prejudice((~~,~~)) and ((~~the court shall~~)) order the defendant to be committed to a state hospital ((~~as defined in RCW 72.23.010~~)) for up to ((~~seventy-two~~)) 120 hours if the defendant has not undergone competency restoration services or has engaged in outpatient competency restoration services and up to 72 hours if the defendant engaged in inpatient competency restoration services 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~~)) However, the court shall not ((~~be dismissed~~)) dismiss the charges 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~~)) If 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~~))

(6) Any period of competency restoration treatment under this section includes only the time the defendant is actually at the facility or is actively participating in an outpatient competency restoration program and is in addition to reasonable time for transport to or from the facility.

**Sec.**  RCW 10.77.088 and 2020 c 18 s 4 are each amended to read as follows:

(1) 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:

(a) Shall dismiss the proceedings without prejudice 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, unless the prosecutor objects to the dismissal and provides notice of a motion for an order for competency restoration treatment, in which case the court shall schedule a hearing within seven days ((~~to determine whether to enter an order of competency restoration~~)).

(b) At the hearing, the prosecuting attorney must establish that there is a compelling state interest to order 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, any history that suggests whether ((~~or not~~)) competency restoration treatment is likely to be successful, in addition to the factors listed under RCW 10.77.092. If the prosecuting attorney proves by a preponderance of the evidence that there is a compelling state interest in ordering competency restoration treatment, then the court shall issue an order ((~~competency restoration~~)) in accordance with subsection (2)((~~(a)~~)) of this section.

(2)((~~(a)~~)) If a court finds pursuant to subsection (1)(b) of this section that there is a compelling state interest in pursuing competency restoration treatment, ((~~then~~)) the court shall commit the defendant to the custody of the secretary for inpatient competency restoration((~~. Based~~)), or may alternatively order the defendant to receive outpatient competency restoration based on a recommendation from a forensic navigator and input from the parties((~~, the court may order the defendant to receive inpatient competency restoration or outpatient competency restoration~~)).

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

((~~(A)~~)) (i) Adhere to medications or receive prescribed intramuscular medication; ((~~and~~

~~(B)~~)) (ii) Abstain from alcohol and unprescribed drugs; and

(iii) Comply with urinalysis or breathalyzer monitoring if needed.

((~~(ii)~~)) (b) If the court orders inpatient competency restoration, the department shall place the defendant in an appropriate facility of the department for competency restoration under ((~~(b)~~)) subsection (3) of this ((~~subsection~~)) section.

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

((~~(iv)~~)) (d) If a defendant fails to comply with the restrictions of the outpatient competency restoration program such that restoration is no longer appropriate in that setting or the defendant is no longer clinically appropriate for outpatient competency restoration, the ((~~department shall remove the defendant from the outpatient restoration program. The department shall place the defendant instead~~)) director of the outpatient competency restoration program shall notify the authority and the department of the need to terminate the outpatient competency restoration placement and intent to request placement for the defendant in an appropriate facility of the department for inpatient competency restoration ((~~for no longer than twenty-nine days regardless of any time spent in outpatient competency restoration, in addition to reasonable time for transport to or from the facility~~)). The outpatient competency restoration program shall coordinate with the authority, the department, and any law enforcement personnel under (d)(i) of this subsection to ensure that the time period between termination and admission into the inpatient facility is as minimal as possible. The time period for inpatient competency restoration shall be reduced by the time period spent in active treatment within the outpatient competency restoration program, excluding time periods in which the defendant was absent from the program and all time from notice of termination of the outpatient competency restoration period through the defendant's admission to the facility. The department shall obtain a placement for the defendant within seven days of the notice of intent to terminate the outpatient competency restoration placement.

(i) The department may authorize a peace officer to detain the defendant into emergency custody for transport to the designated inpatient competency restoration facility. If medical clearance is required by the designated competency restoration facility before admission, the peace officer must transport the defendant to a crisis stabilization unit, evaluation and treatment facility, emergency department of a local hospital, or triage facility for medical clearance once a bed is available at the designated inpatient competency restoration facility. The signed outpatient competency restoration order of the court shall serve as authority for the detention of the defendant under this subsection. This subsection does not preclude voluntary transportation of the defendant to a facility for inpatient competency restoration or for medical clearance, or authorize admission of the defendant into jail.

(ii) The department shall notify the court and parties of the ((~~change in placement~~)) defendant's admission for inpatient competency restoration before the close of the next judicial day. The court shall schedule a hearing within five days to review the ((~~placement and~~)) conditions of release of the defendant and anticipated release from treatment and issue appropriate orders. ((~~The standard of proof shall be a preponderance of the evidence, and the court may in its discretion render its decision based on written submissions, live testimony, or remote testimony.~~

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

((~~(b)~~)) (3) The placement under ((~~(a)~~)) subsection (2) of this ((~~subsection~~)) section shall not exceed ((~~twenty-nine~~)) 29 days if the defendant is ordered to receive inpatient competency restoration, ((~~or~~)) and shall not exceed ((~~ninety~~)) 90 days if the defendant is ordered to receive outpatient competency restoration. The court may order any combination of this subsection((~~, not to exceed ninety days. This period must 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~~)), but the total period of inpatient competency restoration may not exceed 29 days.

((~~(c)~~)) (4) 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 competency restoration treatment, in which case the court shall order that the defendant be referred for evaluation for civil commitment in the manner provided in ((~~(d)~~)) subsection (5) of this ((~~subsection~~)) section.

((~~(d)(i)~~)) (5)(a) 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)~~)) (b) 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~~)) 120 hours if the defendant has not undergone competency restoration services or has engaged in outpatient competency restoration services and up to 72 hours if the defendant engaged in inpatient competency restoration services, excluding Saturdays, Sundays, and holidays, for evaluation for purposes of filing a petition under chapter 71.05 RCW. The ((~~seventy-two~~)) 120-hour or 72-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~~)) 120-hour or 72-hour period.

((~~(3)~~)) (6) If the defendant is charged with a nonfelony crime that is not a serious offense as defined in RCW 10.77.092 and found by the court to be not competent, 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~~)) 24 hours before the dismissal of any proceeding under this subsection, and provide an opportunity for a hearing on whether to dismiss the proceedings.

((~~(4)~~)) (7) If at any time the court dismisses charges under subsections (1) through ((~~(3)~~)) (6) of this section, the court shall make a finding as to whether the defendant has a history of one or more violent acts. If the court so finds, the defendant is barred from the possession of firearms until a court restores his or her right to possess a firearm under RCW 9.41.047. The court shall state to the defendant and provide written notice that the defendant is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

(8) Any period of competency restoration treatment under this section includes only the time the defendant is actually at the facility or is actively participating in an outpatient competency restoration program and is in addition to reasonable time for transport to or from the facility.

**Sec.**  RCW 10.77.250 and 1987 c 75 s 1 are each amended to read as follows:

((~~The~~)) (1) Within amounts appropriated, the department shall be responsible for all costs relating to the evaluation and inpatient treatment of persons committed to it pursuant to any provisions of this chapter, and the logistical and supportive services pertaining thereto except as otherwise provided by law. Reimbursement may be obtained by the department pursuant to RCW 43.20B.330.

(2) Within amounts appropriated, the authority shall be responsible for all costs relating to outpatient competency restoration programs.

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

No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor the state, a unit of local government, an evaluation and treatment facility, a secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to detain a person for medical clearance or treatment, provided that such duties were performed in good faith and without gross negligence.

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

The authority shall report annually to the governor and relevant committees of the legislature, beginning November 1, 2022, and shall make the report public, describing:

(1) How many individuals are being served by outpatient competency restoration programs and in what locations;

(2) The length of stay of individuals in outpatient competency restoration programs;

(3) The number of individuals who are revoked from an outpatient competency restoration program into inpatient treatment, and the outcomes of other individuals, if any, whose participation in an outpatient competency restoration program were terminated before the completion of the program; and

(4) For individuals who were revoked from an outpatient competency restoration program into an inpatient competency restoration program, how many days the individuals spent in outpatient competency restoration treatment and inpatient competency restoration treatment, and whether the restoration programs resulted in a finding of competent to stand trial or another outcome.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 31, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2022.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 9, Second Substitute Senate Bill No. 5664 entitled:

"AN ACT Relating to forensic competency restoration programs."

Section 9 adds an emergency clause to the bill. Two sections of this bill require additional resources or processes to be in place in order to implement the bill, therefore I am vetoing the emergency clause in order to ensure our state agencies can effectively implement the important provisions of this legislation. The substance of this bill remains the same but it will take effect in 90 days instead of immediately, allowing our agencies the time needed to operationalize these policies.

For these reasons I have vetoed Section 9 of Second Substitute Senate Bill No. 5664.

With the exception of Section 9, Second Substitute Senate Bill No. 5664 is approved."