

2SSB 5440 - S AMD 139
By Senator Dhingra

ADOPTED 03/02/2023

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that defendants
4 referred for services related to competency to stand trial requiring
5 admission into a psychiatric facility are currently facing
6 unprecedented wait times in jail for admission. The situation has
7 been exacerbated by closure of forensic beds and workforce shortages
8 related to COVID-19, and treatment capacity limits related to social
9 distancing requirements. Moreover, a backlog of criminal prosecutions
10 that were held back during the first two years of the pandemic due to
11 capacity limitations in courts, prosecuting attorneys offices, and
12 jails, are now being filed, causing a surge in demand for competency
13 services which exceeds the state's capacity to make a timely
14 response. In partial consequence, as of January 2023, wait times for
15 admission to western state hospital for competency services, directed
16 to be completed within seven days by order of the United States
17 district court for western Washington, have risen to over ten months,
18 while wait times for admission to eastern state hospital for the same
19 services have risen to over five months. The state's forensic bed
20 capacity forecast model indicates that if the state continues to
21 receive competency referrals from local superior, district, and
22 municipal courts at the same volume, the state will rapidly fall
23 farther behind.

24 The legislature further finds that historical investments and
25 policy changes have been made in behavioral health services over the
26 past five years, designed to both increase capacity to provide
27 competency to stand trial services and to reduce the need for them by
28 creating opportunities for diversion, prevention, and improved
29 community health. New construction at western state hospital is
30 expected to result in the opening of 58 forensic psychiatric beds in
31 the first quarter of 2023, while emergency community hospital
32 contracts are expected to allow for the discharge or transfer of over

1 50 civil conversion patients occupying forensic state hospital beds
2 over the same period. Sixteen beds for civil conversion patients will
3 open at Maple Lane school in the first quarter of 2023, with 30
4 additional beds for patients acquitted by reason of insanity expected
5 to open by late 2023 or early 2024. Over a longer time period, 350
6 forensic beds are planned to open within a new forensic hospital on
7 western state hospital campus between 2027 and 2029. Policy and
8 budget changes have increased capacity for assisted outpatient
9 treatment, 988 crisis response, use of medication for opioid use
10 disorders in jails and community settings, reentry services, and
11 mental health advance directives, and created new behavioral health
12 facility types, supportive housing, and supportive employment
13 services. Forensic navigator services, outpatient competency
14 restoration programs, and other specialty forensic services are now
15 available and continuing to be deployed in phase two *Trueblood*
16 settlement regions.

17 The legislature further finds that despite these investments
18 there is a need for everyone to come together to find solutions to
19 both reduce demand for forensic services and to increase their
20 supply. The state needs collaboration from local governments and
21 other entities to identify any and all facilities that can be used to
22 provide services to patients connected to the forensic system, to
23 reduce the flow of competency referrals coming from municipal,
24 district, and superior courts, and to improve availability and
25 effectiveness of behavioral health services provided outside the
26 criminal justice system.

27 **Sec. 2.** RCW 10.77.010 and 2022 c 288 s 1 are each reenacted and
28 amended to read as follows:

29 As used in this chapter:

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

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

33 (3) "Clinical intervention specialist" means a licensed
34 professional with prescribing authority who is employed by or
35 contracted with the department to provide direct services, enhanced
36 oversight and monitoring of the behavioral health status of in-
37 custody defendants who have been referred for evaluation or
38 restoration services related to competency to stand trial and who

1 coordinate treatment options with forensic navigators, the
2 department, and jail health services.

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

6 ~~((4))~~ (5) "Community behavioral health agency" has the same
7 meaning as "licensed or certified behavioral health agency" defined
8 in RCW 71.24.025.

9 ~~((5))~~ (6) "Conditional release" means modification of a court-
10 ordered commitment, which may be revoked upon violation of any of its
11 terms.

12 ~~((6))~~ (7) A "criminally insane" person means any person who has
13 been acquitted of a crime charged by reason of insanity, and
14 thereupon found to be a substantial danger to other persons or to
15 present a substantial likelihood of committing criminal acts
16 jeopardizing public safety or security unless kept under further
17 control by the court or other persons or institutions.

18 ~~((7))~~ (8) "Department" means the state department of social and
19 health services.

20 ~~((8))~~ (9) "Designated crisis responder" has the same meaning as
21 provided in RCW 71.05.020.

22 ~~((9))~~ (10) "Detention" or "detain" means the lawful confinement
23 of a person, under the provisions of this chapter, pending
24 evaluation.

25 ~~((10))~~ (11) "Developmental disabilities professional" means a
26 person who has specialized training and ~~((three years of))~~ experience
27 in directly treating or working with persons with developmental
28 disabilities and is a psychiatrist or psychologist, or a social
29 worker, and such other developmental disabilities professionals as
30 may be defined by rules adopted by the secretary.

31 ~~((11))~~ (12) "Developmental disability" means the condition as
32 defined in RCW 71A.10.020~~((5))~~.

33 ~~((12))~~ (13) "Discharge" means the termination of hospital
34 medical authority. The commitment may remain in place, be terminated,
35 or be amended by court order.

36 ~~((13))~~ (14) "Furlough" means an authorized leave of absence for
37 a resident of a state institution operated by the department
38 designated for the custody, care, and treatment of the criminally
39 insane, consistent with an order of conditional release from the
40 court under this chapter, without any requirement that the resident

1 be accompanied by, or be in the custody of, any law enforcement or
2 institutional staff, while on such unescorted leave.

3 ~~((14))~~ (15) "Genuine doubt as to competency" means that there
4 is reasonable cause to believe, based upon actual interactions with
5 or observations of the defendant or information provided by counsel,
6 that a defendant is incompetent to stand trial.

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

15 ~~((15))~~ (17) "History of one or more violent acts" means violent
16 acts committed during: (a) The ten-year period of time prior to the
17 filing of criminal charges; plus (b) the amount of time equal to time
18 spent during the ten-year period in a mental health facility or in
19 confinement as a result of a criminal conviction.

20 ~~((16))~~ (18) "Immediate family member" means a spouse, child,
21 stepchild, parent, stepparent, grandparent, sibling, or domestic
22 partner.

23 ~~((17))~~ (19) "Incompetency" means a person lacks the capacity to
24 understand the nature of the proceedings against him or her or to
25 assist in his or her own defense as a result of mental disease or
26 defect.

27 ~~((18))~~ (20) "Indigent" means any person who is financially
28 unable to obtain counsel or other necessary expert or professional
29 services without causing substantial hardship to the person or his or
30 her family.

31 ~~((19))~~ (21) "Individualized service plan" means a plan prepared
32 by a developmental disabilities professional with other professionals
33 as a team, for an individual with developmental disabilities, which
34 shall state:

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

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

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

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

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

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

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

10 ~~((20))~~ (22) "Professional person" means:

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

18 (b) A psychologist licensed as a psychologist pursuant to chapter
19 18.83 RCW;

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

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

25 ~~((21))~~ (23) "Release" means legal termination of the court-
26 ordered commitment under the provisions of this chapter.

27 ~~((22))~~ (24) "Secretary" means the secretary of the department
28 of social and health services or his or her designee.

29 ~~((23))~~ (25) "Treatment" means any currently standardized
30 medical or mental health procedure including medication.

31 ~~((24))~~ (26) "Treatment records" include registration and all
32 other records concerning persons who are receiving or who at any time
33 have received services for mental illness, which are maintained by
34 the department, by behavioral health administrative services
35 organizations and their staffs, by managed care organizations and
36 their staffs, and by treatment facilities. Treatment records do not
37 include notes or records maintained for personal use by a person
38 providing treatment services for the department, behavioral health
39 administrative services organizations, managed care organizations, or

1 a treatment facility if the notes or records are not available to
2 others.

3 ~~((25))~~ (27) "Violent act" means behavior that: (a) (i) Resulted
4 in; (ii) if completed as intended would have resulted in; or (iii)
5 was threatened to be carried out by a person who had the intent and
6 opportunity to carry out the threat and would have resulted in,
7 homicide, nonfatal injuries, or substantial damage to property; or
8 (b) recklessly creates an immediate risk of serious physical injury
9 to another person. As used in this subsection, "nonfatal injuries"
10 means physical pain or injury, illness, or an impairment of physical
11 condition. "Nonfatal injuries" shall be construed to be consistent
12 with the definition of "bodily injury," as defined in RCW 9A.04.110.

13 **Sec. 3.** RCW 10.77.060 and 2022 c 288 s 2 are each amended to
14 read as follows:

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

22 (b) Whenever there is a doubt as to competency, the court on its
23 own motion or on the motion of any party shall first review the
24 allegations of incompetency. The court shall make a determination of
25 whether sufficient facts have been provided to form a genuine doubt
26 as to competency based on information provided by counsel, judicial
27 colloquy, or direct observation of the defendant. If a genuine doubt
28 as to competency exists, the court shall either appoint or request
29 the secretary to designate a qualified expert or professional person,
30 who shall be approved by the prosecuting attorney, to evaluate and
31 report upon the mental condition of the defendant.

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

1 have access to records of the developmental disabilities
2 administration of the department.

3 ~~((e))~~ (d) The evaluator shall assess the defendant in a jail,
4 detention facility, in the community, or in court to determine
5 whether a period of inpatient commitment will be necessary to
6 complete an accurate evaluation. If inpatient commitment is needed,
7 the signed order of the court shall serve as authority for the
8 evaluator to request the jail or detention facility to transport the
9 defendant to a hospital or secure mental health facility for a period
10 of commitment not to exceed fifteen days from the time of admission
11 to the facility. Otherwise, the evaluator shall complete the
12 evaluation.

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

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

32 ~~((f))~~ (g) When a defendant is ordered to be evaluated under
33 this subsection (1), or when a party or the court determines at first
34 appearance that an order for evaluation under this subsection will be
35 requested or ordered if charges are pursued, the court may delay
36 granting bail until the defendant has been evaluated for competency
37 or sanity and appears before the court. Following the evaluation, in
38 determining bail the court shall consider: (i) Recommendations of the
39 evaluator regarding the defendant's competency, sanity, or diminished
40 capacity; (ii) whether the defendant has a recent history of one or

1 more violent acts; (iii) whether the defendant has previously been
2 acquitted by reason of insanity or found incompetent; (iv) whether it
3 is reasonably likely the defendant will fail to appear for a future
4 court hearing; and (v) whether the defendant is a threat to public
5 safety.

6 (h) If the defendant ordered to be evaluated under this
7 subsection (1) is charged with a serious traffic offense under RCW
8 9.94A.030, or a felony version of a serious traffic offense, the
9 prosecutor may make a motion to modify the defendant's conditions of
10 release to include a condition prohibiting the defendant from driving
11 during the pendency of the competency evaluation period.

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

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

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

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

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

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

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

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

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

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

22 (6) If a finding of the competency evaluation under this section
23 or under RCW 10.77.084 is that the individual is not competent due to
24 an intellectual or developmental disability, the evaluator shall
25 notify the department, which shall refer the individual to the
26 developmental disabilities administration of the department for
27 review of eligibility for services. Information about availability of
28 services must be provided to the forensic navigator.

29 (7) If the expert or professional person appointed to perform a
30 competency evaluation is not able to complete the evaluation after
31 two attempts at scheduling with the defendant, the department shall
32 submit a report to the court and parties and include a date and time
33 for another evaluation which must be at least four weeks later. The
34 court shall provide notice to the defendant of the date and time of
35 the evaluation. If the defendant fails to appear at that appointment,
36 the court shall issue a warrant for the failure to appear and recall
37 the order for competency evaluation.

38 **Sec. 4.** RCW 10.77.068 and 2022 c 288 s 3 are each amended to
39 read as follows:

1 (1) (a) The legislature establishes a performance target of seven
2 days or fewer to extend an offer of admission to a defendant in
3 pretrial custody for inpatient competency evaluation or inpatient
4 competency restoration services, when access to the services is
5 legally authorized.

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

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

11 (ii) To extend an offer of admission to a defendant ordered to be
12 committed to (~~a state hospital~~) the department for placement in a
13 facility operated by or contracted by the department following
14 dismissal of charges based on incompetency to stand trial under RCW
15 10.77.086.

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

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

25 (b) A maximum time limit of 14 days as measured from the
26 department's receipt of the court order, or a maximum time limit of
27 21 days as measured from signature of the court order, whichever is
28 shorter, is established to complete the services specified in
29 subsection (1) (b) of this section, subject to the limitations under
30 subsection (9) of this section.

31 (3) The legislature recognizes that these targets may not be
32 achievable in all cases, but intends for the department to manage,
33 allocate, and request appropriations for resources in order to meet
34 these targets whenever possible without sacrificing the accuracy and
35 quality of competency services.

36 (4) It shall be a defense to an allegation that the department
37 has exceeded the maximum time limits for completion of competency
38 services described in subsection (2) of this section if the
39 department can demonstrate by a preponderance of the evidence that
40 the reason for exceeding the maximum time limits was outside of the

1 department's control including, but not limited to, the following
2 circumstances:

3 (a) Despite a timely request, the department has not received
4 necessary medical information regarding the current medical status of
5 a defendant;

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

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

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

18 (e) Completion of the referral requires additional time to
19 accommodate the availability or participation of counsel, court
20 personnel, interpreters, or the defendant;

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

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

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

35 (6) The department shall:

36 (a) Develop, document, and implement procedures to monitor the
37 clinical status of defendants admitted to a state hospital for
38 competency services that allow the state hospital to accomplish early
39 discharge for defendants for whom clinical objectives have been

1 achieved or may be achieved before expiration of the commitment
2 period;

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

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

10 (7) Following any quarter in which a state hospital has failed to
11 meet one or more of the performance targets or maximum time limits
12 under subsection (1) or (2) of this section, the department shall
13 report to the executive and the legislature the extent of this
14 deviation and describe any corrective action being taken to improve
15 performance. This report shall be made publicly available. An average
16 may be used to determine timeliness under this subsection.

17 (8) The department shall report annually to the legislature and
18 the executive on the timeliness of services related to competency to
19 stand trial and the timeliness with which court referrals accompanied
20 by charging documents, discovery, and criminal history information
21 are provided to the department relative to the signature date of the
22 court order. The report must be in a form that is accessible to the
23 public and that breaks down performance by county.

24 (9) This section does not create any new entitlement or cause of
25 action related to the timeliness of competency to stand trial
26 services, nor can it form the basis for contempt sanctions under
27 chapter 7.21 RCW or a motion to dismiss criminal charges.

28 **Sec. 5.** RCW 10.77.074 and 2019 c 326 s 2 are each amended to
29 read as follows:

30 (1) Subject to the limitations described in subsection (2) of
31 this section, a court may appoint an impartial forensic navigator
32 employed by or contracted by the department to assist individuals who
33 have been referred for competency evaluation and shall appoint a
34 forensic navigator in circumstances described under section 9 of this
35 act.

36 (2) A forensic navigator must assist the individual to access
37 services related to diversion and community outpatient competency
38 restoration. The forensic navigator must assist the individual,
39 prosecuting attorney, defense attorney, and the court to understand

1 the options available to the individual and be accountable as an
2 officer of the court for faithful execution of the responsibilities
3 outlined in this section.

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

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

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

11 (c) To assess the individual for appropriateness for assisted
12 outpatient treatment under chapter 71.05 RCW;

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

18 ~~-d-))~~ (e) To provide regular updates to the court and parties of
19 the status of the individual's participation in diversion services
20 and be responsive to inquiries by the parties about treatment status;

21 (f) When the individual is ordered to receive community
22 outpatient restoration, to provide services to the individual
23 including:

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

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

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

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

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

34 (vi) Assisting the individual with obtaining prescribed
35 medication and encouraging adherence with prescribed medication;

36 (vii) Assessing the individual for appropriateness for assisted
37 outpatient treatment under chapter 71.05 RCW and coordinating the
38 initiation of an assisted outpatient treatment order if appropriate
39 as part of a diversion program plan;

1 (viii) Planning for a coordinated transition of the individual to
2 a case manager in the community behavioral health system;

3 ~~((viii))~~ (ix) Attempting to follow-up with the individual to
4 check whether the meeting with a community-based case manager took
5 place;

6 ~~((ix))~~ (x) When the individual is a high utilizer, attempting
7 to connect the individual with high utilizer services; and

8 ~~((x))~~ (xi) Attempting to check up on the individual at least
9 once per month for up to sixty days after coordinated transition to
10 community behavioral health services, without duplicating the
11 services of the community-based case manager;

12 (g) If the individual is an American Indian or Alaska Native who
13 receives medical, behavioral health, housing, or other supportive
14 services from a tribe within this state, to notify and coordinate
15 with the tribe and Indian health care provider. Notification shall be
16 made in person or by telephonic or electronic communication to the
17 tribal contact listed in the authority's tribal crisis coordination
18 plan as soon as possible.

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

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

25 (6) The signed order for competency evaluation from the court
26 shall serve as authority for the forensic navigator to be given
27 access to all records held by a behavioral health, educational, or
28 law enforcement agency or a correctional facility that relates to an
29 individual. Information that is protected by state or federal law,
30 including health information, shall not be entered into the court
31 record without the consent of the individual or their defense
32 attorney.

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

36 (8) A court may not issue an order appointing a forensic
37 navigator unless the department certifies that there is adequate
38 forensic navigator capacity to provide these services at the time the
39 order is issued.

1 **Sec. 6.** RCW 10.77.084 and 2016 sp.s. c 29 s 410 are each amended
2 to read as follows:

3 (1) (a) If at any time during the pendency of an action and prior
4 to judgment the court finds, following a report as provided in RCW
5 10.77.060, a defendant is incompetent, the court shall order the
6 proceedings against the defendant be stayed except as provided in
7 subsection (4) of this section. If the defendant is charged with a
8 serious traffic offense under RCW 9.94A.030, or a felony version of a
9 serious traffic offense, the court may order the clerk to transmit an
10 order to the department of licensing for revocation of the
11 defendant's driver's license for a period of one year.

12 (b) The court may order a defendant who has been found to be
13 incompetent to undergo competency restoration treatment at a facility
14 designated by the department if the defendant is eligible under RCW
15 10.77.086 or 10.77.088. At the end of each competency restoration
16 period or at any time a professional person determines competency has
17 been, or is unlikely to be, restored, the defendant shall be returned
18 to court for a hearing, except that if the opinion of the
19 professional person is that the defendant remains incompetent and the
20 hearing is held before the expiration of the current competency
21 restoration period, the parties may agree to waive the defendant's
22 presence, to remote participation by the defendant at a hearing, or
23 to presentation of an agreed order in lieu of a hearing. The facility
24 shall promptly notify the court and all parties of the date on which
25 the competency restoration period commences and expires so that a
26 timely hearing date may be scheduled.

27 (c) The court's order for inpatient restoration, shall specify
28 whether the department has the authority to change the defendant's
29 placement to a step-down facility or outpatient competency
30 restoration program if the department determines that such placement
31 is clinically appropriate given the defendant's progress in
32 restoration services.

33 (d) If, following notice and hearing or entry of an agreed order
34 under (b) of this subsection, the court finds that competency has
35 been restored, the court shall lift the stay entered under (a) of
36 this subsection. If the court finds that competency has not been
37 restored, the court shall dismiss the proceedings without prejudice,
38 except that the court may order a further period of competency
39 restoration treatment if it finds that further treatment within the
40 time limits established by RCW 10.77.086 or 10.77.088 is likely to

1 restore competency, and a further period of treatment is allowed
2 under RCW 10.77.086 or 10.77.088.

3 ~~((d))~~ (e) If at any time during the proceeding the court finds,
4 following notice and hearing, a defendant is not likely to regain
5 competency, the court shall dismiss the proceedings without prejudice
6 and refer the defendant for civil commitment evaluation or
7 proceedings if appropriate under RCW 10.77.065, 10.77.086, or
8 10.77.088.

9 (f) If the court issues an order directing revocation of the
10 defendant's driver's license under (a) of this subsection, and the
11 court subsequently finds that the defendant's competency has been
12 restored, the court shall order the clerk to transmit an order to the
13 department of licensing for reinstatement of the defendant's driver's
14 license. The court may direct the clerk to transmit an order
15 reinstating the defendant's driver's license before the end of one
16 year for good cause upon the petition of the defendant.

17 (2) If the defendant is referred for evaluation by a designated
18 crisis responder under this chapter, the designated crisis responder
19 shall provide prompt written notification of the results of the
20 evaluation and whether the person was detained. The notification
21 shall be provided to the court in which the criminal action was
22 pending, the prosecutor, the defense attorney in the criminal action,
23 and the facility that evaluated the defendant for competency.

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

27 (4) A defendant receiving medication for either physical or
28 mental problems shall not be prohibited from standing trial, if the
29 medication either enables the defendant to understand the proceedings
30 against him or her and to assist in his or her own defense, or does
31 not disable him or her from so understanding and assisting in his or
32 her own defense.

33 (5) At or before the conclusion of any commitment period provided
34 for by this section, the facility providing evaluation and treatment
35 shall provide to the court a written report of evaluation which meets
36 the requirements of RCW 10.77.060(3). For defendants charged with a
37 felony, the report following the second competency restoration period
38 or first competency restoration period if the defendant's
39 incompetence is determined to be solely due to a developmental
40 disability or the evaluator concludes that the defendant is not

1 likely to regain competency must include an assessment of the
2 defendant's future dangerousness which is evidence-based regarding
3 predictive validity.

4 **Sec. 7.** RCW 10.77.086 and 2022 c 288 s 4 are each amended to
5 read as follows:

6 (1) If the defendant is charged with a felony and determined to
7 be incompetent, until he or she has regained the competency necessary
8 to understand the proceedings against him or her and assist in his or
9 her own defense, but in any event for a period of no longer than 90
10 days, the court shall commit the defendant to the custody of the
11 secretary for inpatient competency restoration, or may alternatively
12 order the defendant to receive outpatient competency restoration
13 based on a recommendation from a forensic navigator and input from
14 the parties.

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

18 (i) Adhere to medications or receive prescribed intramuscular
19 medication;

20 (ii) Abstain from alcohol and unprescribed drugs; and

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

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

26 (c) If the court orders outpatient competency restoration, the
27 court shall modify conditions of release as needed to authorize the
28 department to place the person in approved housing, which may include
29 access to supported housing, affiliated with a contracted outpatient
30 competency restoration program. The department, in conjunction with
31 the health care authority, must establish rules for conditions of
32 participation in the outpatient competency restoration program, which
33 must include the defendant being subject to medication management.
34 The court may order regular urinalysis testing. The outpatient
35 competency restoration program shall monitor the defendant during the
36 defendant's placement in the program and report any noncompliance or
37 significant changes with respect to the defendant to the department
38 and, if applicable, the forensic navigator.

1 (d) If a defendant fails to comply with the restrictions of the
2 outpatient restoration program such that restoration is no longer
3 appropriate in that setting or the defendant is no longer clinically
4 appropriate for outpatient competency restoration, the director of
5 the outpatient competency restoration program shall notify the
6 authority and the department of the need to terminate the outpatient
7 competency restoration placement and intent to request placement for
8 the defendant in an appropriate facility of the department for
9 inpatient competency restoration. The outpatient competency
10 restoration program shall coordinate with the authority, the
11 department, and any law enforcement personnel under (d)(i) of this
12 subsection to ensure that the time period between termination and
13 admission into the inpatient facility is as minimal as possible. The
14 time period for inpatient competency restoration shall be reduced by
15 the time period spent in active treatment within the outpatient
16 competency restoration program, excluding time periods in which the
17 defendant was absent from the program and all time from notice of
18 termination of the outpatient competency restoration period through
19 the defendant's admission to the facility. The department shall
20 obtain a placement for the defendant within seven days of the notice
21 of intent to terminate the outpatient competency restoration
22 placement.

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

37 (ii) The department shall notify the court and parties of the
38 defendant's admission for inpatient competency restoration before the
39 close of the next judicial day. The court shall schedule a hearing

1 within five days to review the conditions of release of the defendant
2 and anticipated release from treatment and issue appropriate orders.

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

9 (2) For a defendant whose highest charge is a class C felony, or
10 a class B felony that is not classified as violent under RCW
11 9.94A.030, the maximum time allowed for the initial competency
12 restoration period is 45 days if the defendant is referred for
13 inpatient competency restoration, or 90 days if the defendant is
14 referred for outpatient competency restoration, provided that if the
15 outpatient competency restoration placement is terminated and the
16 defendant is subsequently admitted to an inpatient facility, the
17 period of inpatient treatment during the first competency restoration
18 period under this subsection shall not exceed 45 days.

19 (3) If the court determines or the parties agree before the
20 initial competency restoration period or at any subsequent stage of
21 the proceedings that the defendant is unlikely to regain competency,
22 the court may dismiss the charges without prejudice without ordering
23 the defendant to undergo an initial or further period of competency
24 restoration treatment, in which case the court shall order that the
25 defendant be referred for evaluation for civil commitment in the
26 manner provided in subsection (5) of this section.

27 (4) On or before expiration of the initial competency restoration
28 period the court shall conduct a hearing to determine whether the
29 defendant is now competent to stand trial. If the court finds by a
30 preponderance of the evidence that the defendant is incompetent to
31 stand trial, the court may order an extension of the competency
32 restoration period for an additional period of 90 days, but the court
33 must at the same time set a date for a new hearing to determine the
34 defendant's competency to stand trial before the expiration of this
35 second restoration period. The defendant, the defendant's attorney,
36 and the prosecutor have the right to demand that the hearing be
37 before a jury. No extension shall be ordered for a second or third
38 competency restoration period if the defendant's incompetence has
39 been determined by the secretary to be solely the result of a

1 developmental disability which is such that competence is not
2 reasonably likely to be regained during an extension.

3 (5) At the hearing upon the expiration of the second competency
4 restoration period, or at the end of the first competency restoration
5 period if the defendant is ineligible for a second or third
6 competency restoration period under subsection (4) of this section,
7 if the jury or court finds that the defendant is incompetent to stand
8 trial, the court shall dismiss the charges without prejudice and
9 order the defendant to be committed to (~~a state hospital~~) the
10 department for placement in a facility operated or contracted by the
11 department for up to 120 hours if the defendant has not undergone
12 competency restoration services or has engaged in outpatient
13 competency restoration services and up to 72 hours if the defendant
14 engaged in inpatient competency restoration services starting from
15 admission to the facility, excluding Saturdays, Sundays, and
16 holidays, for evaluation for the purpose of filing a civil commitment
17 petition under chapter 71.05 RCW. However, the court shall not
18 dismiss the charges if the court or jury finds that: (a) The
19 defendant (i) is a substantial danger to other persons; or (ii)
20 presents a substantial likelihood of committing criminal acts
21 jeopardizing public safety or security; and (b) there is a
22 substantial probability that the defendant will regain competency
23 within a reasonable period of time. If the court or jury makes such a
24 finding, the court may extend the period of commitment for up to an
25 additional six months.

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

31 **Sec. 8.** RCW 10.77.088 and 2022 c 288 s 5 are each amended to
32 read as follows:

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

36 (a) Shall dismiss the proceedings without prejudice and detain
37 the defendant (~~(for sufficient time to allow the designated crisis~~
38 ~~responder to evaluate the defendant and consider initial detention~~
39 ~~proceedings under chapter 71.05 RCW)) pursuant to subsection (5) of~~

1 this section, unless the prosecutor objects to the dismissal and
2 provides notice of a motion for an order for competency restoration
3 treatment, in which case the court shall schedule a hearing within
4 seven days.

5 (b) At the hearing, the prosecuting attorney must establish that
6 there is a compelling state interest to order competency restoration
7 treatment for the defendant. The court may consider prior criminal
8 history, prior history in treatment, prior history of violence, the
9 quality and severity of the pending charges, any history that
10 suggests whether competency restoration treatment is likely to be
11 successful, in addition to the factors listed under RCW 10.77.092. If
12 the prosecuting attorney proves by a preponderance of the evidence
13 that there is a compelling state interest in ordering competency
14 restoration treatment, then the court shall issue an order in
15 accordance with subsection (2) of this section. If the defendant is
16 subject to an order under chapter 71.05 RCW or proceedings under
17 chapter 71.05 RCW have been initiated, there is a rebuttable
18 presumption that the state's compelling interest has been satisfied.
19 If the defendant is charged with a serious traffic offense under RCW
20 9.94A.030, the court may order the clerk to transmit an order to the
21 department of licensing for revocation of the defendant's driver's
22 license for a period of one year. The court shall direct the clerk to
23 transmit an order to the department of licensing reinstating the
24 defendant's driver's license if the defendant is subsequently
25 restored to competency, and may do so at any time before the end of
26 one year for good cause upon the petition of the defendant.

27 (2)(a) If a court finds pursuant to subsection (1)(b) of this
28 section that there is a compelling state interest in pursuing
29 competency restoration treatment, the court shall (~~commit the~~
30 ~~defendant to the custody of the secretary for inpatient competency~~
31 ~~restoration, or may alternatively)) order the defendant to receive
32 outpatient competency restoration (~~based on a recommendation from a~~
33 ~~forensic navigator and input from the parties)) consistent with the
34 recommendation of the forensic navigator, unless the court finds that
35 an order for outpatient competency restoration is inappropriate
36 considering the health and safety of the defendant and risks to
37 public safety.~~~~

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

1 (i) Adhere to medications or receive prescribed intramuscular
2 medication;

3 (ii) Abstain from alcohol and unprescribed drugs; and

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

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

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

24 (~~(d)~~) (e) If a defendant fails to comply with the restrictions
25 of the outpatient competency restoration program such that
26 restoration is no longer appropriate in that setting or the defendant
27 is no longer clinically appropriate for outpatient competency
28 restoration, the director of the outpatient competency restoration
29 program shall notify the authority and the department of the need to
30 terminate the outpatient competency restoration placement and intent
31 to request placement for the defendant in an appropriate facility of
32 the department for inpatient competency restoration. The outpatient
33 competency restoration program shall coordinate with the authority,
34 the department, and any law enforcement personnel under (~~(d)~~) (e)

35 (i) of this subsection to ensure that the time period between
36 termination and admission into the inpatient facility is as minimal
37 as possible. The time period for inpatient competency restoration
38 shall be reduced by the time period spent in active treatment within
39 the outpatient competency restoration program, excluding time periods
40 in which the defendant was absent from the program and all time from

1 notice of termination of the outpatient competency restoration period
2 through the defendant's admission to the facility. The department
3 shall obtain a placement for the defendant within seven days of the
4 notice of intent to terminate the outpatient competency restoration
5 placement.

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

20 (ii) The department shall notify the court and parties of the
21 defendant's admission for inpatient competency restoration before the
22 close of the next judicial day. The court shall schedule a hearing
23 within five days to review the conditions of release of the defendant
24 and anticipated release from treatment and issue appropriate orders.

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

31 (g) If the court does not order the defendant to receive
32 outpatient competency restoration under (a) of this subsection, the
33 court shall commit the defendant to the department for placement in a
34 facility operated or contracted by the department for inpatient
35 competency restoration.

36 (3) The placement under subsection (2) of this section shall not
37 exceed 29 days if the defendant is ordered to receive inpatient
38 competency restoration, and shall not exceed 90 days if the defendant
39 is ordered to receive outpatient competency restoration. The court

1 may order any combination of this subsection, but the total period of
2 inpatient competency restoration may not exceed 29 days.

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

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

15 (b) If the defendant was in custody and not on conditional
16 release at the time of dismissal, the defendant shall be detained and
17 sent to an evaluation and treatment facility for up to 120 hours if
18 the defendant has not undergone competency restoration services or
19 has engaged in outpatient competency restoration services and up to
20 72 hours if the defendant engaged in inpatient competency restoration
21 services, excluding Saturdays, Sundays, and holidays, for evaluation
22 for purposes of filing a petition under chapter 71.05 RCW. The 120-
23 hour or 72-hour period shall commence upon the next nonholiday
24 weekday following the court order and shall run to the end of the
25 last nonholiday weekday within the 120-hour or 72-hour period.

26 (6) If the defendant is charged with a nonfelony crime that is
27 not a serious offense as defined in RCW 10.77.092 and found by the
28 court to be not competent, the court may stay or dismiss proceedings
29 and detain the defendant for sufficient time to allow the designated
30 crisis responder to evaluate the defendant and consider initial
31 detention proceedings under chapter 71.05 RCW. The court must give
32 notice to all parties at least 24 hours before the dismissal of any
33 proceeding under this subsection, and provide an opportunity for a
34 hearing on whether to dismiss the proceedings.

35 (7) If at any time the court dismisses charges under subsections
36 (1) through (6) of this section, the court shall make a finding as to
37 whether the defendant has a history of one or more violent acts. If
38 the court so finds, the defendant is barred from the possession of
39 firearms until a court restores his or her right to possess a firearm
40 under RCW 9.41.047. The court shall state to the defendant and

1 provide written notice that the defendant is barred from the
2 possession of firearms and that the prohibition remains in effect
3 until a court restores his or her right to possess a firearm under
4 RCW 9.41.047.

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

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

12 (1) In counties with a forensic navigator program, a forensic
13 navigator shall:

14 (a) Meet, interview, and observe all defendants charged with a
15 nonfelony who have had two or more competency evaluations in the
16 preceding 24 months on separate charges or cause numbers and
17 determine the defendants' willingness to engage with services under
18 this section; and

19 (b) Provide a diversion program plan to the parties in each case
20 that includes a recommendation for a diversion program to defense
21 counsel and the prosecuting attorney. Services under a diversion
22 program may include a referral for assisted outpatient treatment
23 under chapter 71.05 RCW.

24 (2) If the parties agree on the diversion program recommended by
25 the forensic navigator, the prosecutor shall request dismissal of the
26 criminal charges.

27 (3) If the parties do not agree on the diversion program, the
28 defense may move the court for an order dismissing the criminal
29 charges without prejudice and referring the defendant to the services
30 described in the diversion program. The court shall hold a hearing on
31 this motion within 10 days. The court shall grant the defense motion
32 if it finds by a preponderance of the evidence that the defendant is
33 amenable to the services described in the diversion program and can
34 safely receive services in the community.

35 (4) Individuals who receive a dismissal of charges and referral
36 to services described in a diversion program shall have a forensic
37 navigator assigned to assist them for up to six months while engaging
38 in the services described in the diversion program. The forensic

1 navigator shall provide monthly status updates to the court and the
2 parties regarding the individual's status in the diversion program.

3 **Sec. 10.** RCW 10.77.092 and 2014 c 10 s 2 are each amended to
4 read as follows:

5 (1) For purposes of determining whether a court may authorize
6 involuntary medication for the purpose of competency restoration
7 pursuant to RCW 10.77.084 and for maintaining the level of
8 restoration in the jail following the restoration period, a pending
9 charge involving any one or more of the following crimes is a serious
10 offense per se in the context of competency restoration:

11 (a) Any violent offense, sex offense, serious traffic offense,
12 and most serious offense, as those terms are defined in RCW
13 9.94A.030;

14 (b) Any offense, except nonfelony counterfeiting offenses,
15 included in crimes against persons in RCW 9.94A.411;

16 (c) Any offense contained in chapter 9.41 RCW (firearms and
17 dangerous weapons);

18 (d) Any offense listed as domestic violence in RCW 10.99.020;

19 (e) Any offense listed as a harassment offense in chapter 9A.46
20 RCW, except for criminal trespass in the first or second degree;

21 (f) Any violation of chapter 69.50 RCW that is a class B felony;
22 or

23 (g) Any city or county ordinance or statute that is equivalent to
24 an offense referenced in this subsection.

25 (2) (a) In a particular case, a court may determine that a pending
26 charge not otherwise defined as serious by state or federal law or by
27 a city or county ordinance is, nevertheless, a serious offense within
28 the context of competency restoration treatment when the conduct in
29 the charged offense falls within the standards established in (b) of
30 this subsection.

31 (b) To determine that the particular case is a serious offense
32 within the context of competency restoration, the court must consider
33 the following factors and determine that one or more of the following
34 factors creates a situation in which the offense is serious:

35 (i) The charge includes an allegation that the defendant actually
36 inflicted bodily or emotional harm on another person or that the
37 defendant created a reasonable apprehension of bodily or emotional
38 harm to another;

1 (ii) The extent of the impact of the alleged offense on the basic
2 human need for security of the citizens within the jurisdiction;

3 (iii) The number and nature of related charges pending against
4 the defendant;

5 (iv) The length of potential confinement if the defendant is
6 convicted; and

7 (v) The number of potential and actual victims or persons
8 impacted by the defendant's alleged acts.

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

11 (1) When an individual has a prescription for an antipsychotic,
12 antidepressant, antiepileptic, or other drug prescribed to the
13 individual to treat a serious mental illness by a state hospital or
14 other state facility or a behavioral health agency or other certified
15 medical provider, and the individual is medically stable on the drug,
16 a jail or juvenile detention facility shall continue prescribing the
17 prescribed drug and may not require the substitution of a different
18 drug in a given therapeutic class, except under the following
19 circumstances:

20 (a) The substitution is for a generic version of a name brand
21 drug and the generic version is chemically identical to the name
22 brand drug; or

23 (b) The drug cannot be prescribed for reasons of drug recall or
24 removal from the market, or medical evidence indicating no
25 therapeutic effect of the drug.

26 (2) This section includes but is not limited to situations in
27 which the individual returns to a jail or juvenile detention facility
28 directly after undergoing treatment at a state hospital, behavioral
29 health agency, outpatient competency restoration program, or prison.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 10.77
31 RCW to read as follows:

32 (1) Subject to the availability of funds appropriated for this
33 specific purpose, the department shall develop a program for
34 individuals who have been involved with the criminal justice system
35 and who have been found under RCW 10.77.084 as incompetent to stand
36 trial due to an intellectual or developmental disability or dementia.
37 The program must involve wraparound services and housing supports
38 appropriate to the needs of the individual. It is sufficient to meet

1 the criteria for participation in this program if the individual has
2 recently been the subject of criminal charges that were dismissed
3 without prejudice and was found incompetent to stand trial due to an
4 intellectual or developmental disability or dementia.

5 (2) In the event that a court orders the commitment of an
6 individual to the custody of the department under RCW 10.77.086(5)
7 who was found incompetent to stand trial due to an intellectual or
8 developmental disability or dementia, the department shall place the
9 individual in the program either directly from the jail or as soon
10 thereafter as may be practicable, without maintaining the individual
11 at an inpatient facility for longer than is clinically necessary.
12 Nothing in this subsection prohibits the department from returning
13 the individual to their home or to another less restrictive setting
14 if such placement is appropriate, which may include provision of
15 supportive services to help the person maintain stability.

16 NEW SECTION. **Sec. 13.** Subject to the availability of funds
17 appropriated for this specific purpose, the health care authority
18 shall require the programs it contracts with to increase compensation
19 for staff in outpatient competency restoration programs to provide
20 compensation at competitive levels to improve recruitment and allow
21 for the full implementation of outpatient competency restoration
22 programs.

23 NEW SECTION. **Sec. 14.** A new section is added to chapter 10.77
24 RCW to read as follows:

25 An outpatient competency restoration program must include access
26 to a prescriber.

27 NEW SECTION. **Sec. 15.** A new section is added to chapter 10.77
28 RCW to read as follows:

29 Jails shall allow clinical intervention specialists to have
30 access to individuals who are referred to receive services under this
31 chapter and to all records relating to the health or conduct of the
32 individual while incarcerated. Clinical intervention specialists
33 shall support jail health services in providing direct services,
34 enhanced oversight and monitoring of the behavioral health status of
35 participating individuals. Clinical intervention specialists shall
36 work collaboratively with jail health services to ensure appropriate
37 prescriptions, medication compliance monitoring, and access to

1 supportive behavioral health services to the individuals. Clinical
2 intervention specialists shall coordinate with forensic navigators
3 and the department to assist forensic navigators in making
4 recommendations for appropriate placements, which may include
5 recommendations for participation in an outpatient competency
6 restoration program or a diversion program designed for the needs of
7 the individual. The clinical intervention specialist shall notify the
8 department if a participating individual appears to have stabilized
9 in their behavioral health such that a new competency evaluation is
10 appropriate to reassess the individual's need for competency
11 restoration treatment.

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

14 The department shall collect data so that information can be
15 retrieved based on unique individuals, their complete Washington
16 criminal history and referrals for forensic services.

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

19 (1) The department shall coordinate with cities, counties,
20 hospitals, and other public and private entities to identify
21 locations that may be commissioned or renovated for use in treating
22 clients committed to the department for competency evaluation,
23 competency restoration, civil conversion, or treatment following
24 acquittal by reason of insanity.

25 (2) The department may provide capital grants to entities to
26 accomplish the purposes described in subsection (1) of this section
27 subject to provision of funding provided for this specific purpose.

28 NEW SECTION. **Sec. 18.** Sections 6 through 8 of this act are
29 necessary for the immediate preservation of the public peace, health,
30 or safety, or support of the state government and its existing public
31 institutions, and take effect immediately."

2SSB 5440 - S AMD 139
By Senator Dhingra

ADOPTED 03/02/2023

1 On page 1, line 5 of the title, after "agreement;" strike the
2 remainder of the title and insert "amending RCW 10.77.060, 10.77.068,
3 10.77.074, 10.77.084, 10.77.086, 10.77.088, and 10.77.092; reenacting
4 and amending RCW 10.77.010; adding new sections to chapter 10.77 RCW;
5 creating new sections; and declaring an emergency."

EFFECT: Removes all references to clinical intervention units.

Allows the determination of genuine doubt as to competency to include consideration of information provided by counsel.

Specifies that clinical intervention specialists must provide direct services in jail to defendants who are referred for competency evaluation or restoration services.

Directs courts to recall competency evaluation orders and issue a failure to appear warrant for defendants who fail to appear for an out-of-custody competency evaluation after two failed attempts by the department of social and health services at scheduling with the defendant and a third attempt scheduled at least four weeks later for which the court must provide notice to the defendant.

Directs forensic navigators to meet, interview, observe, and propose diversion programs for nonfelony defendants with two or more referrals for competency evaluation in the past two years without being appointed by a court, and instructs them to be responsive to inquiries by the parties about the treatment status of defendants or former defendants to which they are assigned.

Creates a rebuttable presumption that the state's compelling interest in providing competency restoration services to a defendant charged with a serious nonfelony is satisfied if the defendant is subject to a civil involuntary treatment order or civil involuntary treatment proceedings have been initiated.

Removes a requirement for a judge to order a defendant to receive competency restoration services in an outpatient competency restoration program recommended by a forensic navigator unless the court finds that an outpatient program is clearly inappropriate and allows the court to order inpatient competency restoration if it finds that an outpatient program is inappropriate.

Makes the development of a program for persons with intellectual or developmental disabilities or dementia whose charges were dismissed based on incompetency to stand trial subject to appropriation.

Clarifies that the department of social and health services data system must be configured to retrieve history data from the state of Washington.

Reduces the scope of the emergency clause to apply only to sections 6, 7, and 8 of this act.

Other technical amendments.

--- END ---