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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5177

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State of Washington

64th Legislature

2015 Regular Session

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

1 AN ACT Relating to improving timeliness of competency evaluation  
2 and restoration services; amending RCW 10.77.084, 10.77.086,  
3 10.77.088, 10.77.091, 10.77.220, 71.05.235, and 10.77.065; reenacting  
4 and amending RCW 10.77.065; adding new sections to chapter 10.77 RCW;  
5 creating a new section; providing an effective date; and providing an  
6 expiration date.

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

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

16 **Sec. 2.** RCW 10.77.084 and 2012 c 256 s 5 are each amended to  
17 read as follows:

18 (1)(a) If at any time during the pendency of an action and prior  
19 to judgment the court finds, following a report as provided in RCW  
20 10.77.060, a defendant is incompetent to stand trial, the court shall

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

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

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

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

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

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

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

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

35 **Sec. 3.** RCW 10.77.086 and 2013 c 289 s 2 are each amended to  
36 read as follows:

37 (1)(a)(i) If the defendant is charged with a felony and  
38 determined to be incompetent, until he or she has regained the  
39 competency necessary to understand the proceedings against him or her

1 and assist in his or her own defense, (~~or has been determined~~  
2 ~~unlikely to regain competency pursuant to RCW 10.77.084(1)(b),~~) but  
3 in any event for a period of no longer than ninety days, the court:

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

7 ~~((ii))~~ (B) May alternatively order the defendant to undergo  
8 evaluation and treatment at some other facility as determined by the  
9 department, or under the guidance and control of a professional  
10 person. The facilities may include community mental health providers  
11 or other local facilities that contract with the department and are  
12 willing and able to provide treatment under this section. During the  
13 2015-2017 fiscal biennium, the department may contract with one or  
14 more cities or counties to provide competency restoration services in  
15 a city or county jail if the city or county jail is willing and able  
16 to serve as a location for competency restoration services and if the  
17 secretary determines that there is an emergent need for beds and  
18 documents the justification, including a plan to address the  
19 emergency. Patients receiving competency restoration services in a  
20 city or county jail must be physically separated from other  
21 populations at the jail, must interact only with treatment staff and  
22 not jail staff, and must be provided as much as possible with a  
23 therapeutic environment.

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

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

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

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

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

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

1 is in addition to reasonable time for transport to or from the  
2 facility.

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

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

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

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

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

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

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

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

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

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

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

34        **Sec. 5.** RCW 10.77.091 and 2010 c 263 s 2 are each amended to  
35 read as follows:

36        (1) If the secretary determines in writing that a person  
37 committed to the custody of the secretary for treatment as criminally  
38 insane presents an unreasonable safety risk which, based on behavior,  
39 clinical history, and facility security is not manageable in a state

1 hospital setting, the secretary may place the person in any secure  
2 facility operated by the secretary or the secretary of the department  
3 of corrections. Any person affected by this provision shall receive  
4 appropriate mental health treatment governed by a formalized  
5 treatment plan targeted at mental health rehabilitation needs and  
6 shall be afforded his or her rights under RCW 10.77.140, 10.77.150,  
7 and 10.77.200. The secretary of the department of social and health  
8 services shall retain legal custody of any person placed under this  
9 section and review any placement outside of a department mental  
10 health hospital every three months, or sooner if warranted by the  
11 person's mental health status, to determine if the placement remains  
12 appropriate.

13 (2) Beginning December 1, 2010, and every six months thereafter,  
14 the secretary shall report to the governor and the appropriate  
15 committees of the legislature regarding the use of the authority  
16 under this section to transfer persons to a secure facility. The  
17 report shall include information related to the number of persons who  
18 have been placed in a secure facility operated by the secretary or  
19 the secretary of the department of corrections, and the length of  
20 time that each such person has been in the secure facility.

21 (~~(3) This section expires June 30, 2015.~~)

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

24 No person who is criminally insane confined pursuant to this  
25 chapter shall be incarcerated in a state correctional institution or  
26 facility(~~(- PROVIDED, That nothing herein shall prohibit)~~). This  
27 section does not apply to confinement in a mental health facility  
28 located wholly within a correctional institution. Confinement of a  
29 person who is criminally insane in a county jail or other local  
30 facility while awaiting either placement in a treatment program or a  
31 court hearing pursuant to this chapter is permitted for no more than  
32 seven days.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 10.77  
34 RCW to read as follows:

35 (1) If the defendant is charged with a nonfelony offense, and the  
36 issue of competency to stand trial is raised by the court or a party  
37 under RCW 10.77.060, the prosecutor may continue with the competency  
38 process or dismiss the charges without prejudice and refer the



1 defendant for assessment by a mental health professional, chemical  
2 dependency professional, or developmental disabilities professional  
3 to determine the appropriate service needs for the defendant.

4 (2) This section does not apply to defendants with a current  
5 charge or prior conviction for a serious violent offense or sex  
6 offense as defined in RCW 9.94A.030.

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.77  
8 RCW to read as follows:

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

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

18 (b) Responsibility for training forensic evaluators;

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

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

24 (e) Coordination with state hospitals to identify and develop  
25 best practice interventions and curricula for services that are  
26 unique to forensic patients;

27 (f) Promotion of congruence across state hospitals where  
28 appropriate, and promotion of interventions that flow smoothly into  
29 community interventions;

30 (g) Coordination with regional support networks, behavioral  
31 health organizations, community mental health agencies, and the  
32 department of corrections regarding community treatment and  
33 monitoring of persons on conditional release;

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

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

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

4 **Sec. 9.** RCW 71.05.235 and 2008 c 213 s 5 are each amended to  
5 read as follows:

6 (1) If an individual is referred to a designated mental health  
7 professional under RCW 10.77.088(1)((~~b~~)) (c)(i), the designated  
8 mental health professional shall examine the individual within forty-  
9 eight hours. If the designated mental health professional determines  
10 it is not appropriate to detain the individual or petition for a  
11 ninety-day less restrictive alternative under RCW 71.05.230(4), that  
12 decision shall be immediately presented to the superior court for  
13 hearing. The court shall hold a hearing to consider the decision of  
14 the designated mental health professional not later than the next  
15 judicial day. At the hearing the superior court shall review the  
16 determination of the designated mental health professional and  
17 determine whether an order should be entered requiring the person to  
18 be evaluated at an evaluation and treatment facility. No person  
19 referred to an evaluation and treatment facility may be held at the  
20 facility longer than seventy-two hours.

21 (2) If an individual is placed in an evaluation and treatment  
22 facility under RCW 10.77.088(1)((~~b~~)) (c)(ii), a professional person  
23 shall evaluate the individual for purposes of determining whether to  
24 file a ninety-day inpatient or outpatient petition under chapter  
25 71.05 RCW. Before expiration of the seventy-two hour evaluation  
26 period authorized under RCW 10.77.088(1)((~~b~~)) (c)(ii), the  
27 professional person shall file a petition or, if the recommendation  
28 of the professional person is to release the individual, present his  
29 or her recommendation to the superior court of the county in which  
30 the criminal charge was dismissed. The superior court shall review  
31 the recommendation not later than forty-eight hours, excluding  
32 Saturdays, Sundays, and holidays, after the recommendation is  
33 presented. If the court rejects the recommendation to unconditionally  
34 release the individual, the court may order the individual detained  
35 at a designated evaluation and treatment facility for not more than a  
36 seventy-two hour evaluation and treatment period and direct the  
37 individual to appear at a surety hearing before that court within  
38 seventy-two hours, or the court may release the individual but direct  
39 the individual to appear at a surety hearing set before that court

1 within eleven days, at which time the prosecutor may file a petition  
2 under this chapter for ninety-day inpatient or outpatient treatment.  
3 If a petition is filed by the prosecutor, the court may order that  
4 the person named in the petition be detained at the evaluation and  
5 treatment facility that performed the evaluation under this  
6 subsection or order the respondent to be in outpatient treatment. If  
7 a petition is filed but the individual fails to appear in court for  
8 the surety hearing, the court shall order that a mental health  
9 professional or peace officer shall take such person or cause such  
10 person to be taken into custody and placed in an evaluation and  
11 treatment facility to be brought before the court the next judicial  
12 day after detention. Upon the individual's first appearance in court  
13 after a petition has been filed, proceedings under RCW 71.05.310 and  
14 71.05.320 shall commence. For an individual subject to this  
15 subsection, the prosecutor or professional person may directly file a  
16 petition for ninety-day inpatient or outpatient treatment and no  
17 petition for initial detention or fourteen-day detention is required  
18 before such a petition may be filed.

19 The court shall conduct the hearing on the petition filed under  
20 this subsection within five judicial days of the date the petition is  
21 filed. The court may continue the hearing upon the written request of  
22 the person named in the petition or the person's attorney, for good  
23 cause shown, which continuance shall not exceed five additional  
24 judicial days. If the person named in the petition requests a jury  
25 trial, the trial shall commence within ten judicial days of the date  
26 of the filing of the petition. The burden of proof shall be by clear,  
27 cogent, and convincing evidence and shall be upon the petitioner. The  
28 person shall be present at such proceeding, which shall in all  
29 respects accord with the constitutional guarantees of due process of  
30 law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

31 During the proceeding the person named in the petition shall  
32 continue to be detained and treated until released by order of the  
33 court. If no order has been made within thirty days after the filing  
34 of the petition, not including any extensions of time requested by  
35 the detained person or his or her attorney, the detained person shall  
36 be released.

37 (3) If a designated mental health professional or the  
38 professional person and prosecuting attorney for the county in which  
39 the criminal charge was dismissed or attorney general, as  
40 appropriate, stipulate that the individual does not present a

1 likelihood of serious harm or is not gravely disabled, the hearing  
2 under this section is not required and the individual, if in custody,  
3 shall be released.

4 (4) The individual shall have the rights specified in RCW  
5 71.05.360 (8) and (9).

6 **Sec. 10.** RCW 10.77.065 and 2014 c 10 s 3 are each amended to  
7 read as follows:

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

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

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

36 (iv) If there is no professional person at the local correctional  
37 facility, the local correctional facility shall designate a  
38 professional person as defined in RCW 71.05.020 or, in cooperation

1 with the regional support network, a professional person at the  
2 regional support network to receive the report and recommendation.

3 (v) Upon commencement of a defendant's evaluation in the local  
4 correctional facility, the local correctional facility must notify  
5 the evaluator of the name of the professional person, or person  
6 designated under (a)(iv) of this subsection, to receive the report  
7 and recommendation.

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

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

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

23 (4) A facility conducting a civil commitment evaluation under RCW  
24 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a  
25 determination to release the person instead of filing a civil  
26 commitment petition must provide written notice to the prosecutor and  
27 defense attorney at least twenty-four hours prior to release. The  
28 notice may be given by electronic mail, facsimile, or other means  
29 reasonably likely to communicate the information immediately.

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

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

37 (1)(a)(i) The expert conducting the evaluation shall provide his  
38 or her report and recommendation to the court in which the criminal  
39 proceeding is pending. For a competency evaluation of a defendant who

1 is released from custody, if the evaluation cannot be completed  
2 within twenty-one days due to a lack of cooperation by the defendant,  
3 the evaluator shall notify the court that he or she is unable to  
4 complete the evaluation because of such lack of cooperation.

5 (ii) A copy of the report and recommendation shall be provided to  
6 the designated mental health professional, the prosecuting attorney,  
7 the defense attorney, and the professional person at the local  
8 correctional facility where the defendant is being held, or if there  
9 is no professional person, to the person designated under (a)(iv) of  
10 this subsection. Upon request, the evaluator shall also provide  
11 copies of any source documents relevant to the evaluation to the  
12 designated mental health professional.

13 (iii) Any facility providing inpatient services related to  
14 competency shall discharge the defendant as soon as the facility  
15 determines that the defendant is competent to stand trial. Discharge  
16 shall not be postponed during the writing and distribution of the  
17 evaluation report. Distribution of an evaluation report by a facility  
18 providing inpatient services shall ordinarily be accomplished within  
19 two working days or less following the final evaluation of the  
20 defendant. If the defendant is discharged to the custody of a local  
21 correctional facility, the local correctional facility must continue  
22 the medication regimen prescribed by the facility, when clinically  
23 appropriate, unless the defendant refuses to cooperate with  
24 medication and an involuntary medication order by the court has not  
25 been entered.

26 (iv) If there is no professional person at the local correctional  
27 facility, the local correctional facility shall designate a  
28 professional person as defined in RCW 71.05.020 or, in cooperation  
29 with the behavioral health organization, a professional person at the  
30 behavioral health organization to receive the report and  
31 recommendation.

32 (v) Upon commencement of a defendant's evaluation in the local  
33 correctional facility, the local correctional facility must notify  
34 the evaluator of the name of the professional person, or person  
35 designated under (a)(iv) of this subsection, to receive the report  
36 and recommendation.

37 (b) If the evaluator concludes, under RCW 10.77.060(3)(f), the  
38 person should be evaluated by a designated mental health professional  
39 under chapter 71.05 RCW, the court shall order such evaluation be  
40 conducted prior to release from confinement when the person is

1 acquitted or convicted and sentenced to confinement for twenty-four  
2 months or less, or when charges are dismissed pursuant to a finding  
3 of incompetent to stand trial.

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

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

12 (4) A facility conducting a civil commitment evaluation under RCW  
13 10.77.086(4) or 10.77.088(1)(~~(b)~~) (c)(ii) that makes a  
14 determination to release the person instead of filing a civil  
15 commitment petition must provide written notice to the prosecutor and  
16 defense attorney at least twenty-four hours prior to release. The  
17 notice may be given by electronic mail, facsimile, or other means  
18 reasonably likely to communicate the information immediately.

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

24 NEW SECTION. **Sec. 12.** If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 13.** Section 10 of this act expires April 1,  
29 2016.

30 NEW SECTION. **Sec. 14.** Section 11 of this act takes effect April  
31 1, 2016.

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