
SENATE BILL 5177

State of Washington

64th Legislature

2015 Regular Session

By Senators O'Ban and Darneille; by request of Department of Social and Health Services

Read first time 01/15/15. Referred to Committee on Human Services, Mental Health & Housing.

1 AN ACT Relating to improving timeliness of competency evaluation
2 and restoration services, by clarifying alternative locations for the
3 provision of competency restoration services and defining time
4 periods of commitment; amending RCW 10.77.086, 10.77.088, and
5 10.77.220; and creating a new section.

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

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

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

19 (1)(a) If the defendant is charged with a felony and determined
20 to be incompetent, until he or she has regained the competency

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

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

8 (ii) May alternatively order the defendant to undergo evaluation
9 and treatment at some other facility as determined by the department,
10 or under the guidance and control of a professional person. The
11 facilities may include, but are not limited to, community mental
12 health providers, county jails, or other local facilities.

13 (b) For a defendant whose highest charge is a class C felony, or
14 a class B felony that is not classified as violent under RCW
15 9.94A.030, the maximum time allowed for the initial period of
16 commitment for competency restoration is forty-five days. The forty-
17 five day period includes only the time the defendant is actually at
18 the facility and is in addition to reasonable time for transport to
19 or from the facility.

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

24 (3) If the court finds by a preponderance of the evidence that a
25 defendant charged with a felony is incompetent, the court shall have
26 the option of extending the order of commitment or alternative
27 treatment for an additional period of ninety days, but the court must
28 at the time of extension set a date for a prompt hearing to determine
29 the defendant's competency before the expiration of the second
30 restoration period. The defendant, the defendant's attorney, or the
31 prosecutor has the right to demand that the hearing be before a jury.
32 No extension shall be ordered for a second or third restoration
33 period as provided in subsection (4) of this section if the
34 defendant's incompetence has been determined by the secretary to be
35 solely the result of a developmental disability which is such that
36 competence is not reasonably likely to be regained during an
37 extension. The ninety-day period includes only the time the defendant
38 is actually at the facility and is in addition to reasonable time for
39 transport to or from the facility.

1 (4) For persons charged with a felony, at the hearing upon the
2 expiration of the second restoration period or at the end of the
3 first restoration period, in the case of a defendant with a
4 developmental disability, if the jury or court finds that the
5 defendant is incompetent, the charges shall be dismissed without
6 prejudice, and the court shall order the defendant be committed to a
7 state hospital as defined in RCW 72.23.010 for up to seventy-two
8 hours starting from admission to the facility, excluding Saturdays,
9 Sundays, and holidays, for evaluation for the purpose of filing a
10 civil commitment petition under chapter 71.05 RCW. The criminal
11 charges shall not be dismissed if the court or jury finds that: (a)
12 The defendant (i) is a substantial danger to other persons; or (ii)
13 presents a substantial likelihood of committing criminal acts
14 jeopardizing public safety or security; and (b) there is a
15 substantial probability that the defendant will regain competency
16 within a reasonable period of time. In the event that the court or
17 jury makes such a finding, the court may extend the period of
18 commitment for up to an additional six months. The six-month period
19 includes only the time the defendant is actually at the facility and
20 is in addition to reasonable time for transport to or from the
21 facility.

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

24 (1)(a) If the defendant is charged with a nonfelony crime which
25 is a serious offense as identified in RCW 10.77.092 and found by the
26 court to be not competent, then the court shall order the secretary
27 to place the defendant:

28 (i) At a secure mental health facility in the custody of the
29 department or an agency designated by the department for mental
30 health treatment and restoration of competency. The agencies may
31 include, but are not limited to, community mental health providers,
32 county jails, or other local facilities. The placement shall not
33 exceed fourteen days in addition to any unused time of the evaluation
34 under RCW 10.77.060. The court shall compute this total period and
35 include its computation in the order. The fourteen-day period plus
36 any unused time of the evaluation under RCW 10.77.060 shall be
37 considered to include only the time the defendant is actually at the
38 facility and shall be in addition to reasonable time for transport to
39 or from the facility;

1 (ii) On conditional release for up to ninety days for mental
2 health treatment and restoration of competency; or

3 (iii) Any combination of this subsection.

4 (b)(i) If the proceedings are dismissed under RCW 10.77.084 and
5 the defendant was on conditional release at the time of dismissal,
6 the court shall order the designated mental health professional
7 within that county to evaluate the defendant pursuant to chapter
8 71.05 RCW. The evaluation may be conducted in any location chosen by
9 the professional.

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

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

20 The court may stay or dismiss proceedings and detain the
21 defendant for sufficient time to allow the designated mental health
22 professional to evaluate the defendant and consider initial detention
23 proceedings under chapter 71.05 RCW. The court must give notice to
24 all parties at least twenty-four hours before the dismissal of any
25 proceeding under this subsection, and provide an opportunity for a
26 hearing on whether to dismiss the proceedings.

27 **Sec. 4.** RCW 10.77.220 and 1982 c 112 s 3 are each amended to
28 read as follows:

29 No person who is criminally insane confined pursuant to this
30 chapter shall be incarcerated in a state correctional institution or
31 facility: PROVIDED, That nothing herein shall prohibit confinement in
32 a mental health facility located wholly within a correctional
33 institution. Confinement of a person who is criminally insane in a
34 county jail or other local facility while awaiting either placement
35 in a treatment program or a court hearing pursuant to this chapter is
36 permitted for no more than seven days.

37 NEW SECTION. **Sec. 5.** If any provision of this act or its
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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