
SUBSTITUTE SENATE BILL 5444

State of Washington

66th Legislature

2019 Regular Session

By Senate Behavioral Health Subcommittee to Health & Long Term Care (originally sponsored by Senators Dhingra, O'Ban, Darneille, Wagoner, Frockt, Kuderer, and Nguyen; by request of Office of the Governor)

READ FIRST TIME 02/18/19.

1 AN ACT Relating to providing timely competency evaluations and
2 restoration services to persons suffering from behavioral health
3 disorders within the framework of the forensic mental health care
4 system consistent with the requirements agreed to in the Trueblood
5 settlement agreement; amending RCW 10.31.110, 10.77.086, and
6 10.77.088; adding new sections to chapter 10.77 RCW; creating a new
7 section; and providing an expiration date.

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

9 NEW SECTION. **Sec. 1.** The legislature recognizes that there has
10 been a nationwide increase in the number of individuals with
11 behavioral health disorders in the criminal justice system. The
12 legislature also recognizes that reforms must be made to our own
13 behavioral health systems and services to meet the increasing demands
14 in our state, to provide timely competency evaluations and
15 restoration services, and to comply with federal court orders issued
16 in *A.B., by and through Trueblood, et al., v. DSHS, et al.*, No.
17 15-35462 ("Trueblood"). The legislature acknowledges that these
18 reforms will require the support of a broad range of stakeholders,
19 including local law enforcement, prosecuting attorneys, defense
20 attorneys, community members, and health care providers. The
21 legislature further acknowledges the significant efforts of the

1 parties to the Trueblood litigation to establish a roadmap and
2 framework within their settlement agreement for proposed systemic
3 reforms to the forensic mental health care system. It is the intent
4 of the legislature to enact appropriate reforms consistent with the
5 goals agreed to in the Trueblood settlement agreement, to continue to
6 engage with stakeholders and community partners to address the needs
7 of this vulnerable population, and to ensure that the public safety
8 needs of our communities are met.

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

11 (1) Subject to the limitations described in this subsection, a
12 court may appoint an impartial forensic navigator employed by or
13 contracted with the department to assist individuals:

14 (a) Who have been referred by a prosecutor in lieu of filing
15 charges supported by probable cause in circumstances where the
16 individual has a documented history of mental illness or a history of
17 court orders related to competency to stand trial, or whose criminal
18 charges have been dismissed under RCW 10.77.088 and the person is not
19 detained for treatment by a designated crisis responder, for the
20 purpose of ensuring a warm handoff and coordinated transition into
21 the community behavioral health system, including helping the
22 individual access services such as supportive housing, intensive case
23 management, and assertive community treatment; and

24 (b) Who have been referred for competency evaluation or
25 restoration.

26 (2) A forensic navigator must assist the individual to navigate
27 the legal process and to access available behavioral health
28 resources. During pending criminal proceedings, the forensic
29 navigator must assist the individual, prosecuting attorney, defense
30 attorney, and the court to understand the options available to the
31 individual and be accountable as an officer of the court for faithful
32 execution of the responsibilities outlined in this section.

33 (3) The duties of the forensic navigator during a pending
34 criminal proceeding include, but are not limited to, the following:

35 (a) To collect relevant information about the individual,
36 including prior behavioral health history, prior records of
37 competency evaluation and restoration treatment, the circumstances of
38 the individual leading up to the current matter before the court, and

1 services available to the individual that might support placement in
2 outpatient restoration, diversion, or some combination of these;

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

4 (c) To present information to the court in order to assist the
5 court in understanding the options available to the individual and
6 determining whether he or she is appropriate for outpatient
7 restoration, diversion, or some combination of these; and

8 (d) To monitor all court orders for compliance and provide
9 periodic updates about the individual's engagement in treatment and
10 any relevant changes in the circumstances of the individual.

11 (4) Forensic navigators may submit nonclinical recommendations to
12 the court regarding treatment and restoration options for the
13 individual, which the court may consider and weigh in conjunction
14 with the recommendations of all of the parties.

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

17 (6) The signed order for competency evaluation from the court
18 shall serve as authority for the forensic navigator to be given
19 access to all records held by a behavioral health, educational, or
20 law enforcement agency or a correctional facility that relates to an
21 individual. Information that is protected by state or federal law,
22 including health information, shall not be entered into the court
23 record without the consent of the individual or their defense
24 attorney.

25 (7) A prosecutor may dismiss charges against an individual
26 whenever mental illness or competency to stand trial has become an
27 issue and divert the individual by referring him or her to a forensic
28 navigator or directing the forensic navigator to assist the
29 individual to access services consistent with subsection (1)(a) of
30 this section.

31 (8) A court may not issue an order appointing a forensic
32 navigator unless the department certifies that there is adequate
33 forensic navigator capacity to provide these services at the time the
34 order is issued.

35 **Sec. 3.** RCW 10.31.110 and 2014 c 225 s 57 are each amended to
36 read as follows:

37 (1) When a police officer has reasonable cause to believe that
38 the individual has committed acts constituting a ~~((nonfelony))~~ crime
39 ~~((that is not a serious offense as identified in RCW 10.77.092))~~, and

1 the individual is known by history or consultation with the
2 behavioral health organization, managed care organization, behavioral
3 health administrative services organization, crisis hotline, or local
4 crisis services providers to suffer from a mental disorder, the
5 arresting officer may:

6 (a) Take the individual to a crisis stabilization unit as defined
7 in RCW 71.05.020(~~((6))~~). Individuals delivered to a crisis
8 stabilization unit pursuant to this section may be held by the
9 facility for a period of up to twelve hours. The individual must be
10 examined by a mental health professional within three hours of
11 arrival;

12 (b) Take the individual to a triage facility as defined in RCW
13 71.05.020. An individual delivered to a triage facility which has
14 elected to operate as an involuntary facility may be held up to a
15 period of twelve hours. The individual must be examined by a mental
16 health professional within three hours of arrival;

17 (c) Refer the individual to a mental health professional for
18 evaluation for initial detention and proceeding under chapter 71.05
19 RCW; or

20 (d) Release the individual upon agreement to voluntary
21 participation in outpatient treatment.

22 (2) If the individual is released to the community, the mental
23 health provider shall make reasonable efforts to inform the arresting
24 officer of the planned release (~~((within a reasonable period of time~~
25 ~~after the))~~ prior to release if the arresting officer has
26 specifically requested notification and provided contact information
27 to the provider.

28 (3) In deciding whether to refer the individual to treatment
29 under this section, the police officer (~~((shall))~~) must be guided by
30 (~~((standards))~~) local law enforcement diversion guidelines for
31 behavioral health developed and mutually agreed upon with the
32 prosecuting authority(~~((, which))~~) with an opportunity for consultation
33 and comment by the defense bar and disability community. These
34 guidelines must address, at a minimum, the length, seriousness, and
35 recency of the known criminal history of the individual, the mental
36 health history of the individual, (~~((where))~~) if available, the
37 opinions of a mental health professional, if available, and the
38 circumstances surrounding the commission of the alleged offense. The
39 guidelines must include a process for clearing outstanding warrants
40 or referring the individual for assistance in clearing outstanding

1 warrants, if any, and issuing a new court date, if appropriate,
2 without booking or incarcerating the individual or disqualifying him
3 or her from referral to treatment under this section, and define the
4 circumstances under which such action is permissible.

5 (4) Any agreement to participate in treatment shall not require
6 individuals to stipulate to any of the alleged facts regarding the
7 criminal activity as a prerequisite to participation in a mental
8 health treatment alternative. The agreement is inadmissible in any
9 criminal or civil proceeding. The agreement does not create immunity
10 from prosecution for the alleged criminal activity.

11 (5) If an individual violates such agreement and the mental
12 health treatment alternative is no longer appropriate:

13 (a) The mental health provider shall inform the referring law
14 enforcement agency of the violation; and

15 (b) The original charges may be filed or referred to the
16 prosecutor, as appropriate, and the matter may proceed accordingly.

17 (6) The police officer is immune from liability for any good
18 faith conduct under this section.

19 (7) The Washington association of sheriffs and police chiefs
20 shall collect and maintain a file of written local law enforcement
21 diversion guidelines for behavioral health developed pursuant to
22 subsection (3) of this section.

23 **Sec. 4.** RCW 10.77.086 and 2015 1st sp.s. c 7 s 5 are each
24 amended to read as follows:

25 (1) (a) (i) If the defendant is charged with a felony and
26 determined to be incompetent, until he or she has regained the
27 competency necessary to understand the proceedings against him or her
28 and assist in his or her own defense, but in any event for a period
29 of no longer than ninety days, the court(~~(~~

30 ~~(A)) shall commit the defendant to the custody of the secretary~~
31 ~~((who shall place such defendant in an appropriate facility of the~~
32 ~~department for evaluation and treatment; or~~

33 ~~(B) May alternatively order the defendant to undergo evaluation~~
34 ~~and treatment at some other facility or provider as determined by the~~
35 ~~department, or under the guidance and control of a professional~~
36 ~~person. The facilities or providers may include community mental~~
37 ~~health providers or other local facilities that contract with the~~
38 ~~department and are willing and able to provide treatment under this~~
39 ~~section. During the 2015-2017 fiscal biennium, the department may~~

1 ~~contract with one or more cities or counties to provide competency~~
2 ~~restoration services in a city or county jail if the city or county~~
3 ~~jail is willing and able to serve as a location for competency~~
4 ~~restoration services and if the secretary determines that there is an~~
5 ~~emergent need for beds and documents the justification, including a~~
6 ~~plan to address the emergency. Patients receiving competency~~
7 ~~restoration services in a city or county jail must be physically~~
8 ~~separated from other populations at the jail and restoration~~
9 ~~treatment services must be provided as much as possible within a~~
10 ~~therapeutic environment.))~~ for competency restoration. The court may
11 order the defendant to receive inpatient competency restoration or
12 outpatient competency restoration based on the clinical
13 recommendation in the competency evaluation.

14 (A) To be eligible for an order for outpatient competency
15 restoration, a defendant must be:

16 (I) Adherent to medications or willing to receive prescribed
17 intravenous medication;

18 (II) Abstinent from alcohol or unprescribed drugs; and

19 (III) Clinically stable.

20 (B) If the court orders inpatient competency restoration, the
21 department shall place the defendant in an appropriate facility of
22 the department for evaluation and treatment.

23 (C) If the court orders outpatient competency restoration, the
24 court shall modify conditions of release as needed to authorize the
25 department to place the person in approved housing, which may include
26 access to supported housing, affiliated with a contracted outpatient
27 competency restoration program. The department must establish
28 conditions of participation in the outpatient competency restoration
29 program which must include the defendant being subject to medication
30 monitoring and daily urinalysis. The outpatient competency
31 restoration program shall monitor the defendant during the
32 defendant's placement in the program and report any noncompliance or
33 significant changes with respect to the defendant to the department
34 and, if applicable, the forensic navigator. The period for outpatient
35 competency restoration must be for up to ninety days, notwithstanding
36 (b) of this subsection.

37 (D) If a defendant fails to comply with the restrictions of the
38 outpatient restoration program, such that restoration is no longer
39 possible in that setting, the department shall remove the defendant
40 from the outpatient restoration program and place the defendant

1 instead in an appropriate facility of the department for inpatient
2 competency restoration. The department shall promptly notify the
3 court and parties and the forensic navigator, if applicable, of the
4 change in placement. The inpatient competency restoration period
5 following a change in placement under this subsection must be the
6 same length as if the defendant had been initially placed into
7 inpatient competency restoration, and any time periods spent in
8 outpatient competency restoration must be disregarded.

9 (E) The court may not issue an order for outpatient competency
10 restoration unless the department certifies that there is an
11 available appropriate outpatient competency restoration program that
12 has adequate space for the person at the time the order is issued.

13 (ii) The ninety day period for ~~((evaluation and treatment))~~
14 competency restoration under this subsection (1) includes only the
15 time the defendant is actually at the facility and is in addition to
16 reasonable time for transport to or from the facility.

17 (b) Except as provided in (a)(i)(C) of this subsection, for a
18 defendant whose highest charge is a class C felony, or a class B
19 felony that is not classified as violent under RCW 9.94A.030, the
20 maximum time allowed for the initial period of commitment for
21 competency restoration is forty-five days. The forty-five day period
22 includes only the time the defendant is actually at the facility and
23 is in addition to reasonable time for transport to or from the
24 facility.

25 (c) If the court determines ~~((or the parties agree))~~ that the
26 defendant is unlikely to regain competency, the court may dismiss the
27 charges without prejudice without ordering the defendant to undergo
28 restoration treatment, in which case the court shall order that the
29 defendant be referred for evaluation for civil commitment in the
30 manner provided in subsection (4) of this section.

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

35 (3) If the court finds by a preponderance of the evidence that a
36 defendant charged with a felony is incompetent, the court shall have
37 the option of extending the order of commitment or alternative
38 treatment for an additional period of ninety days, but the court must
39 at the time of extension set a date for a prompt hearing to determine
40 the defendant's competency before the expiration of the second

1 restoration period. The defendant, the defendant's attorney, or the
2 prosecutor has the right to demand that the hearing be before a jury.
3 No extension shall be ordered for a second or third restoration
4 period as provided in subsection (4) of this section if the
5 defendant's incompetence has been determined by the secretary to be
6 solely the result of a developmental disability which is such that
7 competence is not reasonably likely to be regained during an
8 extension. The ninety-day period includes only the time the defendant
9 is actually at the facility and is in addition to reasonable time for
10 transport to or from the facility.

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

34 **Sec. 5.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended
35 to read as follows:

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

1 (a) Shall dismiss the proceedings without prejudice and detain
2 the defendant for sufficient time to allow the designated crisis
3 responder to evaluate the defendant and consider initial detention
4 proceedings under chapter 71.05 RCW, unless the prosecutor objects to
5 the dismissal and provides notice of a motion for an order for
6 competency restoration, in which case the court must schedule a
7 hearing to determine whether to enter an order of competency
8 restoration.

9 (b) At the hearing, the prosecuting attorney must establish that
10 there is a compelling state interest to order competency restoration
11 treatment for the defendant. The court may consider prior criminal
12 history, prior history in treatment, prior history of violence, the
13 quality and severity of the pending charges, and any history that
14 suggests whether or not competency restoration treatment is likely to
15 be successful. If the prosecuting attorney proves by a preponderance
16 of the evidence that there is a compelling state interest in ordering
17 competency restoration, then the court shall order competency
18 restoration in accordance with subsection (2) (a) of this section.

19 (2) (a) If a court finds pursuant to subsection (1) (b) of this
20 section that there is a compelling state interest in pursuing
21 competency restoration treatment, then the court ((-i-)) shall commit
22 the defendant to the custody of the secretary ((who shall place such
23 defendant in an appropriate facility of the department for evaluation
24 and treatment;

25 ~~(ii) May alternatively order the defendant to undergo evaluation~~
26 ~~and treatment at some other facility or provider as determined by the~~
27 ~~department, or under the guidance and control of a professional~~
28 ~~person. The facilities or providers may include community mental~~
29 ~~health providers or other local facilities that contract with the~~
30 ~~department and are willing and able to provide treatment under this~~
31 ~~section. During the 2015-2017 fiscal biennium, the department may~~
32 ~~contract with one or more cities or counties to provide competency~~
33 ~~restoration services in a city or county jail if the city or county~~
34 ~~jail is willing and able to serve as a location for competency~~
35 ~~restoration services and if the secretary determines that there is an~~
36 ~~emergent need for beds and documents the justification, including a~~
37 ~~plan to address the emergency. Patients receiving competency~~
38 ~~restoration services in a city or county jail must be physically~~
39 ~~separated from other populations at the jail and restoration~~
40 ~~treatment services must be provided as much as possible within a~~

1 ~~therapeutic environment.))~~ for competency restoration. The court may
2 order the defendant to receive inpatient competency restoration or
3 outpatient competency restoration based on the clinical
4 recommendation in the competency evaluation.

5 (i) To be eligible for an order for outpatient competency
6 restoration, a defendant must be:

7 (A) Adherent to medications or willing to receive prescribed
8 intravenous medication;

9 (B) Abstinent from alcohol or unprescribed drugs; and

10 (C) Clinically stable.

11 (ii) If the court orders inpatient competency restoration, the
12 department shall place the defendant in an appropriate facility of
13 the department for evaluation and treatment under (b) of this
14 subsection.

15 (iii) If the court orders outpatient competency restoration, the
16 court shall modify conditions of release as needed to authorize the
17 department to place the person in approved housing, which may include
18 access to supported housing, affiliated with a contracted outpatient
19 competency restoration program. The department shall establish
20 conditions of participation in the outpatient competency restoration
21 program which must include the defendant being subject to medication
22 monitoring and daily urinalysis. The outpatient competency
23 restoration program shall monitor the defendant during the
24 defendant's placement in the program and report any noncompliance or
25 significant changes with respect to the defendant to the department
26 and, if applicable, the forensic navigator. The period for outpatient
27 competency restoration must be for up to ninety days, notwithstanding
28 (b) of this subsection.

29 (iv) If a defendant fails to comply with the restrictions of the
30 outpatient competency restoration program, such that restoration is
31 no longer possible in that setting, the department shall remove the
32 defendant from the outpatient restoration program and place the
33 defendant instead in an appropriate facility of the department for
34 inpatient competency restoration. The department shall promptly
35 notify the court and parties and the forensic navigator, if
36 applicable, of the change in placement. The inpatient competency
37 restoration period following a change in placement under this
38 subsection must be the same length as if the defendant had been
39 initially placed into inpatient competency restoration and any time

1 periods spent in outpatient competency restoration must be
2 disregarded.

3 (v) The court may not issue an order for outpatient competency
4 restoration unless the department certifies that there is an
5 available appropriate outpatient restoration program that has
6 adequate space for the person at the time the order is issued.

7 (b) Except as provided in (a)(iii) of this subsection, the
8 placement under (a) (~~((i) and (ii))~~) of this subsection shall not
9 exceed (~~(fourteen)~~) twenty-nine days (~~(in addition to any unused time~~
10 ~~of the evaluation under RCW 10.77.060. The court shall compute this~~
11 ~~total period and include its computation in the order. The fourteen-~~
12 ~~day period plus any unused time of the evaluation under RCW 10.77.060~~
13 ~~shall)).~~ This period must be considered to include only the time the
14 defendant is actually at the facility and shall be in addition to
15 reasonable time for transport to or from the facility(~~(+~~

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

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

20 (~~((b))~~) (c) If the court has determined (~~(or the parties agree)~~)
21 that the defendant is unlikely to regain competency, the court may
22 dismiss the charges without prejudice without ordering the defendant
23 to undergo restoration treatment, in which case the court shall order
24 that the defendant be referred for evaluation for civil commitment in
25 the manner provided in (~~((e))~~) (d) of this subsection.

26 (~~((e))~~) (d)(i) If the proceedings are dismissed under RCW
27 10.77.084 and the defendant was on conditional release at the time of
28 dismissal, the court shall order the designated crisis responder
29 within that county to evaluate the defendant pursuant to chapter
30 71.05 RCW. The evaluation may be conducted in any location chosen by
31 the professional.

32 (ii) If the defendant was in custody and not on conditional
33 release at the time of dismissal, the defendant shall be detained and
34 sent to an evaluation and treatment facility for up to seventy-two
35 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
36 purposes of filing a petition under chapter 71.05 RCW. The seventy-
37 two hour period shall commence upon the next nonholiday weekday
38 following the court order and shall run to the end of the last
39 nonholiday weekday within the seventy-two-hour period.

1 (~~(2)~~) (3) If the defendant is charged with a nonfelony crime
2 that is not a serious offense as defined in RCW 10.77.092:

3 The court may stay or dismiss proceedings and detain the
4 defendant for sufficient time to allow the designated crisis
5 responder to evaluate the defendant and consider initial detention
6 proceedings under chapter 71.05 RCW. The court must give notice to
7 all parties at least twenty-four hours before the dismissal of any
8 proceeding under this subsection, and provide an opportunity for a
9 hearing on whether to dismiss the proceedings.

10 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.77
11 RCW to read as follows:

12 The department must collaborate with the health care authority to
13 ensure that intensive services consistent with section 2(1)(a) of
14 this act are available for individuals involved with the criminal
15 justice system in every county or region in which a forensic
16 navigator is contracted or employed to provide services, on a
17 timeline consistent with the phased implementation of the settlement
18 agreement in *A.B., by and through Trueblood, et al., v. DSHS, et al.*,
19 No. 15-35462 ("Trueblood").

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

22 (1) The department must implement an outpatient competency
23 restoration program consistent with RCW 10.77.086 and 10.77.088 in
24 the county that has the highest total volume of referrals for
25 competency evaluation and restoration services no later than January
26 1, 2020.

27 (2) This section expires June 30, 2021.

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