

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5444

66th Legislature
2019 Regular Session

Passed by the Senate April 24, 2019
Yeas 48 Nays 0

President of the Senate

Passed by the House April 15, 2019
Yeas 97 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5444** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5444

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, O'Ban, Darneille, Wagoner, Frockt, Kuderer, and Nguyen; by request of Office of the Governor)

READ FIRST TIME 03/01/19.

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 a new section to chapter 10.77 RCW; and creating a
7 new section.

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 section, a court
12 may appoint an impartial forensic navigator employed by or contracted
13 by the department to assist individuals who have been referred for
14 competency evaluation.

15 (2) A forensic navigator must assist the individual to access
16 services related to diversion and community outpatient competency
17 restoration. The forensic navigator must assist the individual,
18 prosecuting attorney, defense attorney, and the court to understand
19 the options available to the individual and be accountable as an
20 officer of the court for faithful execution of the responsibilities
21 outlined in this section.

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

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

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

29 (c) To present information to the court in order to assist the
30 court in understanding the treatment options available to the
31 individual to support the entry of orders for diversion from the
32 forensic mental health system or for community outpatient competency
33 restoration, and to facilitate that transition; and

34 (d) When the individual is ordered to receive community
35 outpatient restoration, to provide services to the individual
36 including:

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

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

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

2 (iv) Providing information to the court concerning the
3 individual's progress and compliance with court-ordered conditions of
4 release, which may include appearing at court hearings to provide
5 information to the court;

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

8 (vi) Assisting the individual with obtaining prescribed
9 medication and encouraging adherence with prescribed medication;

10 (vii) Planning for a coordinated transition of the individual to
11 a case manager in the community behavioral health system;

12 (viii) Attempting to follow up with the individual to check
13 whether the meeting with a community-based case manager took place;

14 (ix) When the individual is a high utilizer, attempting to
15 connect the individual with high utilizer services; and

16 (x) Attempting to check up on the individual at least once per
17 month for up to sixty days after coordinated transition to community
18 behavioral health services, without duplicating the services of the
19 community-based case manager.

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

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

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

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

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

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

3 (1) When a police officer has reasonable cause to believe that
4 the individual has committed acts constituting a (~~(nonfelony)~~) crime
5 (~~(that is not a serious offense as identified in RCW 10.77.092)~~), and
6 the individual is known by history or consultation with the
7 behavioral health organization, managed care organization, behavioral
8 health administrative services organization, crisis hotline, or local
9 crisis services providers to suffer from a mental disorder, in
10 addition to existing authority under state law, as an alternative to
11 arrest, the arresting officer (~~(may)~~) is authorized and encouraged
12 to:

13 (a) Take the individual to a crisis stabilization unit as defined
14 in RCW 71.05.020(~~(+6)~~). Individuals delivered to a crisis
15 stabilization unit pursuant to this section may be held by the
16 facility for a period of up to twelve hours. The individual must be
17 examined by a mental health professional within three hours of
18 arrival;

19 (b) Take the individual to a triage facility as defined in RCW
20 71.05.020. An individual delivered to a triage facility which has
21 elected to operate as an involuntary facility may be held up to a
22 period of twelve hours. The individual must be examined by a mental
23 health professional within three hours of arrival;

24 (c) Refer the individual to a mental health professional for
25 evaluation for initial detention and proceeding under chapter 71.05
26 RCW; or

27 (d) Release the individual upon agreement to voluntary
28 participation in outpatient treatment.

29 (2) If the individual is released to the community, the mental
30 health provider shall make reasonable efforts to inform the arresting
31 officer of the planned release (~~(within a reasonable period of time~~
32 ~~after the)~~) prior to release if the arresting officer has
33 specifically requested notification and provided contact information
34 to the provider.

35 (3) In deciding whether to refer the individual to treatment
36 under this section, the police officer (~~(shall)~~) must be guided by
37 (~~(standards)~~) local law enforcement diversion guidelines for
38 behavioral health developed and mutually agreed upon with the
39 prosecuting authority(~~(, which)~~) with an opportunity for consultation
40 and comment by the defense bar and disability community. These

1 guidelines must address, at a minimum, the length, seriousness, and
2 recency of the known criminal history of the individual, the mental
3 health history of the individual, ~~((where))~~ if available, the
4 opinions of a mental health professional, if available, and the
5 circumstances surrounding the commission of the alleged offense. The
6 guidelines must include a process for clearing outstanding warrants
7 or referring the individual for assistance in clearing outstanding
8 warrants, if any, and issuing a new court date, if appropriate,
9 without booking or incarcerating the individual or disqualifying him
10 or her from referral to treatment under this section, and define the
11 circumstances under which such action is permissible.

12 (4) Any agreement to participate in treatment shall not require
13 individuals to stipulate to any of the alleged facts regarding the
14 criminal activity as a prerequisite to participation in a mental
15 health treatment alternative. The agreement is inadmissible in any
16 criminal or civil proceeding. The agreement does not create immunity
17 from prosecution for the alleged criminal activity.

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

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

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

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

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

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

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

36 ~~(B) May alternatively order the defendant to undergo evaluation~~
37 ~~and treatment at some other facility or provider as determined by the~~
38 ~~department, or under the guidance and control of a professional~~
39 ~~person. The facilities or providers may include community mental~~

1 ~~health providers or other local facilities that contract with the~~
2 ~~department and are willing and able to provide treatment under this~~
3 ~~section. During the 2015-2017 fiscal biennium, the department may~~
4 ~~contract with one or more cities or counties to provide competency~~
5 ~~restoration services in a city or county jail if the city or county~~
6 ~~jail is willing and able to serve as a location for competency~~
7 ~~restoration services and if the secretary determines that there is an~~
8 ~~emergent need for beds and documents the justification, including a~~
9 ~~plan to address the emergency. Patients receiving competency~~
10 ~~restoration services in a city or county jail must be physically~~
11 ~~separated from other populations at the jail and restoration~~
12 ~~treatment services must be provided as much as possible within a~~
13 ~~therapeutic environment.))~~ for competency restoration. Based on a
14 recommendation from a forensic navigator and input from the parties,
15 the court may order the defendant to receive inpatient competency
16 restoration or outpatient competency restoration.

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

20 (I) Adhere to medications or receive prescribed intramuscular
21 medication; and

22 (II) Abstain from alcohol and unprescribed drugs.

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 and
34 regular urinalysis testing for defendants who have a current
35 substance use disorder diagnosis. The outpatient competency
36 restoration program shall monitor the defendant during the
37 defendant's placement in the program and report any noncompliance or
38 significant changes with respect to the defendant to the department
39 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 department
5 shall remove the defendant from the outpatient restoration program
6 and place the defendant instead in an appropriate facility of the
7 department for inpatient competency restoration for no longer than
8 the time allowed as if the defendant had been initially placed into
9 inpatient competency restoration, in addition to reasonable time for
10 transport to or from the facility. The department shall notify the
11 court and parties of the change in placement before the close of the
12 next judicial day. The court shall schedule a hearing within five
13 days to review the placement and conditions of release of the
14 defendant and issue appropriate orders. The standard of proof shall
15 be a preponderance of the evidence, and the court may in its
16 discretion render its decision based on written submissions, live
17 testimony, or remote testimony.

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

24 (ii) The ninety day period for ~~((evaluation and treatment))~~
25 competency restoration under this subsection (1) includes only the
26 time the defendant is actually at the facility and is in addition to
27 reasonable time for transport 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 or the parties agree that the
36 defendant is unlikely to regain competency, the court may dismiss the
37 charges without prejudice without ordering the defendant to undergo
38 restoration treatment, in which case the court shall order that the
39 defendant be referred for evaluation for civil commitment in the
40 manner provided 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, or if the court or jury at any stage finds
26 that the defendant is incompetent and the court determines that the
27 defendant is unlikely to regain competency, the charges shall be
28 dismissed without prejudice, and the court shall order the defendant
29 be committed to a state hospital as defined in RCW 72.23.010 for up
30 to seventy-two hours starting from admission to the facility,
31 excluding Saturdays, Sundays, and holidays, for evaluation for the
32 purpose of filing a civil commitment petition under chapter 71.05
33 RCW. The criminal charges shall not be dismissed if the court or jury
34 finds that: (a) The defendant (i) is a substantial danger to other
35 persons; or (ii) presents a substantial likelihood of committing
36 criminal acts jeopardizing public safety or security; and (b) there
37 is a substantial probability that the defendant will regain
38 competency within a reasonable period of time. In the event that the
39 court or jury makes such a finding, the court may extend the period
40 of commitment for up to an additional six months. The six-month

1 period includes only the time the defendant is actually at the
2 facility and is in addition to reasonable time for transport to or
3 from the facility.

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

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

9 (a) Shall dismiss the proceedings without prejudice and detain
10 the defendant for sufficient time to allow the designated crisis
11 responder to evaluate the defendant and consider initial detention
12 proceedings under chapter 71.05 RCW, unless the prosecutor objects to
13 the dismissal and provides notice of a motion for an order for
14 competency restoration, in which case the court shall schedule a
15 hearing within seven days to determine whether to enter an order of
16 competency restoration.

17 (b) At the hearing, the prosecuting attorney must establish that
18 there is a compelling state interest to order competency restoration
19 treatment for the defendant. The court may consider prior criminal
20 history, prior history in treatment, prior history of violence, the
21 quality and severity of the pending charges, any history that
22 suggests whether or not competency restoration treatment is likely to
23 be successful, in addition to the factors listed under RCW 10.77.092.
24 If the prosecuting attorney proves by a preponderance of the evidence
25 that there is a compelling state interest in ordering competency
26 restoration, then the court shall order competency restoration in
27 accordance with subsection (2) (a) of this section.

28 (2) (a) If a court finds pursuant to subsection (1) (b) of this
29 section that there is a compelling state interest in pursuing
30 competency restoration treatment, then the court ~~((i))~~ shall commit
31 the defendant to the custody of the secretary ~~((who shall place such~~
32 defendant in an appropriate facility of the department for evaluation
33 and treatment;

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

1 ~~section. During the 2015-2017 fiscal biennium, the department may~~
2 ~~contract with one or more cities or counties to provide competency~~
3 ~~restoration services in a city or county jail if the city or county~~
4 ~~jail is willing and able to serve as a location for competency~~
5 ~~restoration services and if the secretary determines that there is an~~
6 ~~emergent need for beds and documents the justification, including a~~
7 ~~plan to address the emergency. Patients receiving competency~~
8 ~~restoration services in a city or county jail must be physically~~
9 ~~separated from other populations at the jail and restoration~~
10 ~~treatment services must be provided as much as possible within a~~
11 ~~therapeutic environment.)~~ for competency restoration. Based on a
12 recommendation from a forensic navigator and input from the parties,
13 the court may order the defendant to receive inpatient competency
14 restoration or outpatient competency restoration.

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

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

20 (B) Abstain from alcohol and unprescribed drugs.

21 (ii) If the court orders inpatient competency restoration, the
22 department shall place the defendant in an appropriate facility of
23 the department for competency restoration under (b) of this
24 subsection.

25 (iii) If the court orders outpatient competency restoration, the
26 court shall modify conditions of release as needed to authorize the
27 department to place the person in approved housing, which may include
28 access to supported housing, affiliated with a contracted outpatient
29 competency restoration program. The department, in conjunction with
30 the health care authority, must establish rules for conditions of
31 participation in the outpatient competency restoration program, which
32 must include the defendant being subject to medication management and
33 regular urinalysis testing for defendants who have a current
34 substance use disorder diagnosis. The outpatient competency
35 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.

39 (iv) If a defendant fails to comply with the restrictions of the
40 outpatient competency restoration program such that restoration is no

1 longer appropriate in that setting or the defendant is no longer
2 clinically appropriate for outpatient competency restoration, the
3 department shall remove the defendant from the outpatient restoration
4 program. The department shall place the defendant instead in an
5 appropriate facility of the department for inpatient competency
6 restoration for no longer than twenty-nine days regardless of any
7 time spent in outpatient competency restoration, in addition to
8 reasonable time for transport to or from the facility. The department
9 shall notify the court and parties of the change in placement before
10 the close of the next judicial day. The court shall schedule a
11 hearing within five days to review the placement and conditions of
12 release of the defendant and issue appropriate orders. The standard
13 of proof shall be a preponderance of the evidence, and the court may
14 in its discretion render its decision based on written submissions,
15 live testimony, or remote testimony.

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

22 (b) The placement under (a) (~~(i) and (ii)~~) of this subsection
23 shall not exceed (~~fourteen~~) twenty-nine days (~~in addition to any~~
24 unused time of the evaluation under RCW 10.77.060. The court shall
25 compute this total period and include its computation in the order.
26 The ~~fourteen-day~~ period plus any unused time of the evaluation under
27 RCW 10.77.060 shall)) if the defendant is ordered to receive
28 inpatient competency restoration, or shall not exceed ninety days if
29 the defendant is ordered to receive outpatient competency
30 restoration. The court may order any combination of this subsection,
31 not to exceed ninety days. This period must be considered to include
32 only the time the defendant is actually at the facility and shall be
33 in addition to reasonable time for transport to or from the
34 facility(~~(~~

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

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

39 ~~((b))~~ (c) If the court has determined or the parties agree that
40 the defendant is unlikely to regain competency, the court may dismiss

1 the charges without prejudice without ordering the defendant to
2 undergo restoration treatment, in which case the court shall order
3 that the defendant be referred for evaluation for civil commitment in
4 the manner provided in ~~((e))~~ (d) of this subsection.

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

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

19 ~~((2))~~ (3) If the defendant is charged with a nonfelony crime
20 that is not a serious offense as defined in RCW 10.77.092:

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

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