

2SSB 5664 - H AMD 1326

By Representative Davis

ADOPTED 03/03/2022

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

3 **"Sec. 1.** RCW 10.77.010 and 2021 c 263 s 9 are each reenacted and
4 amended to read as follows:

5 As used in this chapter:

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

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

11 (3) "Community behavioral health agency" has the same meaning as
12 "licensed or certified behavioral health agency" defined in RCW
13 71.24.025.

14 (4) "Conditional release" means modification of a court-ordered
15 commitment, which may be revoked upon violation of any of its terms.

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

22 (6) "Department" means the state department of social and health
23 services.

24 (7) "Designated crisis responder" has the same meaning as
25 provided in RCW 71.05.020.

26 (8) "Detention" or "detain" means the lawful confinement of a
27 person, under the provisions of this chapter, pending evaluation.

28 (9) "Developmental disabilities professional" means a person who
29 has specialized training and three years of experience in directly
30 treating or working with persons with developmental disabilities and
31 is a psychiatrist or psychologist, or a social worker, and such other

1 developmental disabilities professionals as may be defined by rules
2 adopted by the secretary.

3 (10) "Developmental disability" means the condition as defined in
4 RCW 71A.10.020(5).

5 (11) "Discharge" means the termination of hospital medical
6 authority. The commitment may remain in place, be terminated, or be
7 amended by court order.

8 (12) "Furlough" means an authorized leave of absence for a
9 resident of a state institution operated by the department designated
10 for the custody, care, and treatment of the criminally insane,
11 consistent with an order of conditional release from the court under
12 this chapter, without any requirement that the resident be
13 accompanied by, or be in the custody of, any law enforcement or
14 institutional staff, while on such unescorted leave.

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

23 (14) "History of one or more violent acts" means violent acts
24 committed during: (a) The ten-year period of time prior to the filing
25 of criminal charges; plus (b) the amount of time equal to time spent
26 during the ten-year period in a mental health facility or in
27 confinement as a result of a criminal conviction.

28 (15) "Immediate family member" means a spouse, child, stepchild,
29 parent, stepparent, grandparent, sibling, or domestic partner.

30 (16) "Incompetency" means a person lacks the capacity to
31 understand the nature of the proceedings against him or her or to
32 assist in his or her own defense as a result of mental disease or
33 defect.

34 (17) "Indigent" means any person who is financially unable to
35 obtain counsel or other necessary expert or professional services
36 without causing substantial hardship to the person or his or her
37 family.

38 (18) "Individualized service plan" means a plan prepared by a
39 developmental disabilities professional with other professionals as a

1 team, for an individual with developmental disabilities, which shall
2 state:

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

5 (b) The conditions and strategies necessary to achieve the
6 purposes of habilitation;

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

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

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

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

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

18 (19) "Professional person" means:

19 (a) A psychiatrist licensed as a physician and surgeon in this
20 state who has, in addition, completed three years of graduate
21 training in psychiatry in a program approved by the American medical
22 association or the American osteopathic association and is certified
23 or eligible to be certified by the American board of psychiatry and
24 neurology or the American osteopathic board of neurology and
25 psychiatry;

26 (b) A psychologist licensed as a psychologist pursuant to chapter
27 18.83 RCW; (~~(e)~~)

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

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

33 (20) "Release" means legal termination of the court-ordered
34 commitment under the provisions of this chapter.

35 (21) "Secretary" means the secretary of the department of social
36 and health services or his or her designee.

37 (22) "Treatment" means any currently standardized medical or
38 mental health procedure including medication.

39 (23) "Treatment records" include registration and all other
40 records concerning persons who are receiving or who at any time have

1 received services for mental illness, which are maintained by the
2 department, by behavioral health administrative services
3 organizations and their staffs, by managed care organizations and
4 their staffs, and by treatment facilities. Treatment records do not
5 include notes or records maintained for personal use by a person
6 providing treatment services for the department, behavioral health
7 administrative services organizations, managed care organizations, or
8 a treatment facility if the notes or records are not available to
9 others.

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

20 (25) "Authority" means the Washington state health care
21 authority.

22 **Sec. 2.** RCW 10.77.060 and 2021 c 263 s 5 are each amended to
23 read as follows:

24 (1) (a) Whenever a defendant has pleaded not guilty by reason of
25 insanity, or there is reason to doubt his or her competency, the
26 court on its own motion or on the motion of any party shall either
27 appoint or request the secretary to designate a qualified expert or
28 professional person, who shall be approved by the prosecuting
29 attorney, to evaluate and report upon the mental condition of the
30 defendant.

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

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

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

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

29 (f) When a defendant is ordered to be evaluated under this
30 subsection (1), or when a party or the court determines at first
31 appearance that an order for evaluation under this subsection will be
32 requested or ordered if charges are pursued, the court may delay
33 granting bail until the defendant has been evaluated for competency
34 or sanity and appears before the court. Following the evaluation, in
35 determining bail the court shall consider: (i) Recommendations of the
36 evaluator regarding the defendant's competency, sanity, or diminished
37 capacity; (ii) whether the defendant has a recent history of one or
38 more violent acts; (iii) whether the defendant has previously been
39 acquitted by reason of insanity or found incompetent; (iv) whether it
40 is reasonably likely the defendant will fail to appear for a future

1 court hearing; and (v) whether the defendant is a threat to public
2 safety.

3 (2) The court may direct that a qualified expert or professional
4 person retained by or appointed for the defendant be permitted to
5 witness the evaluation authorized by subsection (1) of this section,
6 and that the defendant shall have access to all information obtained
7 by the court appointed experts or professional persons. The
8 defendant's expert or professional person shall have the right to
9 file his or her own report following the guidelines of subsection (3)
10 of this section. If the defendant is indigent, the court shall upon
11 the request of the defendant assist him or her in obtaining an expert
12 or professional person.

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

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

15 (b) A diagnosis or description of the current mental status of
16 the defendant;

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

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

31 (e) When directed by the court, if an evaluation and report by an
32 expert or professional person has been provided concluding that the
33 defendant lacked the capacity at the time of the offense to form the
34 mental state necessary to commit the charged offense, an opinion as
35 to the capacity of the defendant to have a particular state of mind
36 which is an element of the offense charged;

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

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

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

14 **Sec. 3.** RCW 10.77.068 and 2015 c 5 s 1 are each amended to read
15 as follows:

16 (1) (a) The legislature establishes ~~((the following))~~ a
17 performance ~~((targets and maximum time limits for the timeliness of~~
18 ~~the completion of accurate and reliable evaluations of competency to~~
19 ~~stand trial and admissions for inpatient restoration services related~~
20 ~~to competency to proceed or stand trial for adult criminal~~
21 ~~defendants.))~~ target of seven days or fewer to extend an offer of
22 admission to a defendant in pretrial custody for inpatient competency
23 evaluation or inpatient competency restoration services, when access
24 to the services is legally authorized;

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

28 (i) To complete a competency evaluation in jail and distribute
29 the evaluation report; and

30 (ii) To extend an offer of admission to a defendant ordered to be
31 committed to a state hospital following dismissal of charges based on
32 incompetency to stand trial under RCW 10.77.086.

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

36 (2) (a) A maximum time limit of seven days as measured from the
37 department's receipt of the court order, or a maximum time limit of
38 14 days as measured from signature of the court order, whichever is
39 shorter, is established to complete the services specified in

1 subsection (1)(a) of this section, subject to the limitations under
2 subsection (9) of this section.

3 (b) A maximum time limit of 14 days as measured from the
4 department's receipt of the court order, or a maximum time limit of
5 21 days as measured from signature of the court order, whichever is
6 shorter, is established to complete the services specified in
7 subsection (1)(b) of this section, subject to the limitations under
8 subsection (9) of this section.

9 (3) The legislature recognizes that these targets may not be
10 achievable in all cases ((without compromise to the quality of
11 competency evaluation and restoration services)), but intends for the
12 department to manage, allocate, and request appropriations for
13 resources in order to meet these targets whenever possible without
14 sacrificing the accuracy and quality of competency ((evaluations and
15 restorations, and to otherwise make sustainable improvements and
16 track performance related to the timeliness of competency services:

17 (i) For a state hospital to extend an offer of admission to a
18 defendant in pretrial custody for legally authorized evaluation
19 services related to competency, or to extend an offer of admission
20 for legally authorized services following dismissal of charges based
21 on incompetence to proceed or stand trial:

22 (A) A performance target of seven days or less; and

23 (B) A maximum time limit of fourteen days;

24 (ii) For a state hospital to extend an offer of admission to a
25 defendant in pretrial custody for legally authorized inpatient
26 restoration treatment related to competency:

27 (A) A performance target of seven days or less; and

28 (B) A maximum time limit of fourteen days;

29 (iii) For completion of a competency evaluation in jail and
30 distribution of the evaluation report for a defendant in pretrial
31 custody:

32 (A) A performance target of seven days or less; and

33 (B) A maximum time limit of fourteen days, plus an additional
34 seven-day extension if needed for clinical reasons to complete the
35 evaluation at the determination of the department;

36 (iv) For completion of a competency evaluation in the community
37 and distribution of the evaluation report for a defendant who is
38 released from custody and makes a reasonable effort to cooperate with
39 the evaluation, a performance target of twenty-one days or less))
40 services.

1 ~~((b) The time periods measured in these performance targets and~~
2 ~~maximum time limits shall run from the date on which the state~~
3 ~~hospital receives the court referral and charging documents,~~
4 ~~discovery, police reports, the names and addresses of the attorneys~~
5 ~~for the defendant and state or county, the name of the judge ordering~~
6 ~~the evaluation, information about the alleged crime, and criminal~~
7 ~~history information related to the defendant. The maximum time limits~~
8 ~~in (a) of this subsection shall be phased in over a one-year period~~
9 ~~beginning July 1, 2015, in a manner that results in measurable~~
10 ~~incremental progress toward meeting the time limits over the course~~
11 ~~of the year.~~

12 ~~(e))~~ (4) It shall be a defense to an allegation that the
13 department has exceeded the maximum time limits for completion of
14 competency services described in ~~((a) of this))~~ subsection (2) of
15 this section if the department can demonstrate by a preponderance of
16 the evidence that the reason for exceeding the maximum time limits
17 was outside of the department's control including, but not limited
18 to, the following circumstances:

19 ~~((i))~~ (a) Despite a timely request, the department has not
20 received necessary medical ~~((clearance))~~ information regarding the
21 current medical status of a defendant ~~((in pretrial custody for the~~
22 ~~purposes of admission to a state hospital))~~;

23 ~~((ii))~~ (b) The individual circumstances of the defendant make
24 accurate completion of an evaluation of competency to ~~((proceed or))~~
25 stand trial dependent upon review of mental health, substance use
26 disorder, or medical history information which is in the custody of a
27 third party and cannot be immediately obtained by the department~~((-~~
28 ~~Completion of a competency evaluation))~~, provided that completion
29 shall not be postponed for procurement of ((mental health, substance
30 use disorder, or medical history)) information which is merely
31 supplementary ~~((to the competency determination))~~;

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

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

37 (e) Completion of the referral ((is frustrated by lack of))
38 requires additional time to accommodate the availability or
39 participation ((by)) of counsel, ((jail or)) court personnel,
40 interpreters, or the defendant;

1 ~~((iv))~~ The department does not have access to appropriate private
2 space to conduct a competency evaluation for a defendant in pretrial
3 custody;

4 ~~(v))~~ (f) The defendant asserts legal rights that result in a
5 delay in the provision of competency services; or

6 ~~((vi))~~ (g) An unusual spike in the receipt of evaluation
7 referrals or in the number of defendants requiring restoration
8 services has occurred, causing temporary delays until the unexpected
9 excess demand for competency services can be resolved.

10 ~~((2))~~ (5) The department shall provide written notice to the
11 court when it will not be able to meet the maximum time limits under
12 subsection (2) of this section and identify the reasons for the delay
13 and provide a reasonable estimate of the time necessary to complete
14 the competency service. Good cause for an extension for the
15 additional time estimated by the department shall be presumed absent
16 a written response from the court or a party received by the
17 department within seven days.

18 (6) The department shall:

19 (a) Develop, document, and implement procedures to monitor the
20 clinical status of defendants admitted to a state hospital for
21 competency services that allow the state hospital to accomplish early
22 discharge for defendants for whom clinical objectives have been
23 achieved or may be achieved before expiration of the commitment
24 period;

25 (b) Investigate the extent to which patients admitted to a state
26 hospital under this chapter overstay time periods authorized by law
27 and take reasonable steps to limit the time of commitment to
28 authorized periods; and

29 (c) Establish written standards for the productivity of forensic
30 evaluators and utilize these standards to internally review the
31 performance of forensic evaluators.

32 ~~((3))~~ (7) Following any quarter in which a state hospital has
33 failed to meet one or more of the performance targets or maximum time
34 limits ~~((in))~~ under subsection (1) or (2) of this section ~~((after~~
35 ~~full implementation of the performance target or maximum time~~
36 ~~limit))~~, the department shall report to the executive and the
37 legislature the extent of this deviation and describe any corrective
38 action being taken to improve performance. This report ~~((must))~~ shall
39 be made publicly available. An average may be used to determine
40 timeliness under this subsection.

1 (~~(4) Beginning December 1, 2013, the~~) (8) The department shall
2 report annually to the legislature and the executive on the
3 timeliness of services related to competency to (~~proceed or~~) stand
4 trial and the timeliness with which court referrals accompanied by
5 charging documents, discovery, and criminal history information are
6 provided to the department relative to the signature date of the
7 court order. The report must be in a form that is accessible to the
8 public and that breaks down performance by county.

9 (~~(5)~~) (9) This section does not create any new entitlement or
10 cause of action related to the timeliness of competency (~~evaluations~~
11 ~~or admission for inpatient restoration~~) to stand trial services
12 (~~related to competency to proceed or stand trial~~), nor can it form
13 the basis for contempt sanctions under chapter 7.21 RCW or a motion
14 to dismiss criminal charges.

15 **Sec. 4.** RCW 10.77.086 and 2019 c 326 s 4 are each amended to
16 read as follows:

17 (1)(~~(a)(i)~~) If the defendant is charged with a felony and
18 determined to be incompetent, until he or she has regained the
19 competency necessary to understand the proceedings against him or her
20 and assist in his or her own defense, but in any event for a period
21 of no longer than (~~ninety~~) 90 days, the court shall commit the
22 defendant to the custody of the secretary for inpatient competency
23 restoration(~~(-Based)~~), or may alternatively order the defendant to
24 receive outpatient competency restoration based on a recommendation
25 from a forensic navigator and input from the parties(~~(, the court may~~
26 ~~order the defendant to receive inpatient competency restoration or~~
27 ~~outpatient competency restoration)~~).

28 (~~(A)~~) (a) To be eligible for an order for outpatient competency
29 restoration, a defendant must be clinically appropriate and be
30 willing to:

31 (~~(I)~~) (i) Adhere to medications or receive prescribed
32 intramuscular medication; (~~and~~
33 ~~(II)~~) (ii) Abstain from alcohol and unprescribed drugs; and
34 (iii) Comply with urinalysis or breathalyzer monitoring if
35 needed.

36 (~~(B)~~) (b) If the court orders inpatient competency restoration,
37 the department shall place the defendant in an appropriate facility
38 of the department for competency restoration.

1 ~~((C))~~ (c) If the court orders outpatient competency
2 restoration, the court shall modify conditions of release as needed
3 to authorize the department to place the person in approved housing,
4 which may include access to supported housing, affiliated with a
5 contracted outpatient competency restoration program. The department,
6 in conjunction with the health care authority, must establish rules
7 for conditions of participation in the outpatient competency
8 restoration program, which must include the defendant being subject
9 to medication management ~~((and))~~. The court may order regular
10 urinalysis testing ~~((for defendants who have a current substance use~~
11 ~~disorder diagnosis))~~. The outpatient competency restoration program
12 shall monitor the defendant during the defendant's placement in the
13 program and report any noncompliance or significant changes with
14 respect to the defendant to the department and, if applicable, the
15 forensic navigator.

16 ~~((D))~~ (d) If a defendant fails to comply with the restrictions
17 of the outpatient restoration program such that restoration is no
18 longer appropriate in that setting or the defendant is no longer
19 clinically appropriate for outpatient competency restoration, the
20 ~~((department shall remove the defendant from the outpatient~~
21 ~~restoration program and place the defendant instead))~~ director of the
22 outpatient competency restoration program shall notify the authority
23 and the department of the need to terminate the outpatient competency
24 restoration placement and intent to request placement for the
25 defendant in an appropriate facility of the department for inpatient
26 competency restoration ~~((for no longer than the time allowed as if~~
27 ~~the defendant had been initially placed into inpatient competency~~
28 ~~restoration, in addition to reasonable time for transport to or from~~
29 ~~the facility))~~. The outpatient competency restoration program shall
30 coordinate with the authority, the department, and any law
31 enforcement personnel under (d)(i) of this subsection to ensure that
32 the time period between termination and admission into the inpatient
33 facility is as minimal as possible. The time period for inpatient
34 competency restoration shall be reduced by the time period spent in
35 active treatment within the outpatient competency restoration
36 program, excluding time periods in which the defendant was absent
37 from the program and all time from notice of termination of the
38 outpatient competency restoration period through the defendant's
39 admission to the facility. The department shall obtain a placement

1 for the defendant within seven days of the notice of intent to
2 terminate the outpatient competency restoration placement.

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

17 (ii) The department shall notify the court and parties of the
18 ((change in placement)) defendant's admission for inpatient
19 competency restoration before the close of the next judicial day. The
20 court shall schedule a hearing within five days to review the
21 ((placement and)) conditions of release of the defendant and
22 anticipated release from treatment and issue appropriate orders.
23 ((The standard of proof shall be a preponderance of the evidence, and
24 the court may in its discretion render its decision based on written
25 submissions, live testimony, or remote testimony.

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

32 ((ii) The ninety day period for competency restoration under
33 this subsection (1) includes only the time the defendant is actually
34 at the facility and is in addition to reasonable time for transport
35 to or from the facility.

36 (b)) (2) For a defendant whose highest charge is a class C
37 felony, or a class B felony that is not classified as violent under
38 RCW 9.94A.030, the maximum time allowed for the initial competency
39 restoration period ((of commitment for competency restoration)) is
40 ((forty-five)) 45 days if the defendant is referred for inpatient

1 competency restoration, or 90 days if the defendant is referred for
2 outpatient competency restoration, provided that if the outpatient
3 competency restoration placement is terminated and the defendant is
4 subsequently admitted to an inpatient facility, the period of
5 inpatient treatment during the first competency restoration period
6 under this subsection shall not exceed 45 days. (~~The forty-five day~~
7 ~~period includes only the time the defendant is actually at the~~
8 ~~facility and is in addition to reasonable time for transport to or~~
9 ~~from the facility.~~

10 ~~(e))~~ (3) If the court determines or the parties agree before the
11 initial competency restoration period or at any subsequent stage of
12 the proceedings that the defendant is unlikely to regain competency,
13 the court may dismiss the charges without prejudice without ordering
14 the defendant to undergo an initial or further period of competency
15 restoration treatment, in which case the court shall order that the
16 defendant be referred for evaluation for civil commitment in the
17 manner provided in subsection ~~((4))~~ (5) of this section.

18 ~~((2))~~ (4) On or before expiration of the initial competency
19 restoration period (~~(of commitment under subsection (1) of this~~
20 ~~section))~~ the court shall conduct a hearing (~~(, at which it shall)~~) to
21 determine whether (~~(or not)~~) the defendant is (~~(incompetent. (3))~~)
22 now competent to stand trial. If the court finds by a preponderance
23 of the evidence that ~~((a))~~ the defendant (~~(charged with a felony)~~) is
24 incompetent to stand trial, the court (~~(shall have the option of~~
25 ~~extending the)~~) may order (~~(of commitment or alternative treatment)~~)
26 an extension of the competency restoration period for an additional
27 period of (~~(ninety))~~ 90 days, but the court must at the same time
28 (~~(of extension)~~) set a date for a (~~(prompt)~~) new hearing to determine
29 the defendant's competency to stand trial before the expiration of
30 (~~(the))~~ this second restoration period. The defendant, the
31 defendant's attorney, (~~(or)~~) and the prosecutor (~~(has)~~) have the
32 right to demand that the hearing be before a jury. No extension shall
33 be ordered for a second or third competency restoration period (~~(as~~
34 ~~provided in subsection (4) of this section)~~) if the defendant's
35 incompetence has been determined by the secretary to be solely the
36 result of a developmental disability which is such that competence is
37 not reasonably likely to be regained during an extension. (~~The~~
38 ~~ninety-day period includes only the time the defendant is actually at~~
39 ~~the facility and is in addition to reasonable time for transport to~~
40 ~~or from the facility.~~

1 ~~(4) For persons charged with a felony, at))~~

2 (5) At the hearing upon the expiration of the second competency
3 restoration period, or at the end of the first competency restoration
4 period ((in the case of a)) if the defendant ((with a developmental
5 disability)) is ineligible for a second or third competency
6 restoration period under subsection (4) of this section, if the jury
7 or court finds that the defendant is incompetent ((, or if the court
8 or jury at any stage finds that the defendant is incompetent and the
9 court determines that the defendant is unlikely to regain competency,
10 the charges shall be dismissed)) to stand trial, the court shall
11 dismiss the charges without prejudice ((,)) and ((the court shall))
12 order the defendant to be committed to a state hospital ((as defined
13 in RCW 72.23.010)) for up to ((seventy-two)) 120 hours if the

14 defendant has not undergone competency restoration services or has
15 engaged in outpatient competency restoration services and up to 72
16 hours if the defendant engaged in inpatient competency restoration
17 services starting from admission to the facility, excluding
18 Saturdays, Sundays, and holidays, for evaluation for the purpose of
19 filing a civil commitment petition under chapter 71.05 RCW. ((The
20 criminal charges)) However, the court shall not ((be dismissed))
21 dismiss the charges if the court or jury finds that: (a) The
22 defendant (i) is a substantial danger to other persons; or (ii)
23 presents a substantial likelihood of committing criminal acts
24 jeopardizing public safety or security; and (b) there is a
25 substantial probability that the defendant will regain competency
26 within a reasonable period of time. ((In the event that)) If the
27 court or jury makes such a finding, the court may extend the period
28 of commitment for up to an additional six months. ((The six-month))

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

34 **Sec. 5.** RCW 10.77.088 and 2020 c 18 s 4 are each amended to read
35 as follows:

36 (1) If the defendant is charged with a nonfelony crime which is a
37 serious offense as identified in RCW 10.77.092 and found by the court
38 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 treatment, in which case the court shall
7 schedule a hearing within seven days (~~(to determine whether to enter~~
8 ~~an order of competency 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, any history that
14 suggests whether (~~or not~~) competency restoration treatment is
15 likely to be successful, in addition to the factors listed under RCW
16 10.77.092. If the prosecuting attorney proves by a preponderance of
17 the evidence that there is a compelling state interest in ordering
18 competency restoration treatment, then the court shall issue an order
19 (~~competency restoration~~) in accordance with subsection (2) (~~(a)~~)
20 of this section.

21 (2) (~~(a)~~) If a court finds pursuant to subsection (1)(b) of this
22 section that there is a compelling state interest in pursuing
23 competency restoration treatment, (~~then~~) the court shall commit the
24 defendant to the custody of the secretary for inpatient competency
25 restoration (~~(Based)~~), or may alternatively order the defendant to
26 receive outpatient competency restoration based on a recommendation
27 from a forensic navigator and input from the parties (~~(, the court may~~
28 ~~order the defendant to receive inpatient competency restoration or~~
29 ~~outpatient competency restoration)~~).

30 (~~(i)~~) (a) To be eligible for an order for outpatient competency
31 restoration, a defendant must be clinically appropriate and be
32 willing to:

33 (~~(A)~~) (i) Adhere to medications or receive prescribed
34 intramuscular medication; (~~and~~
35 ~~(B)~~) (ii) Abstain from alcohol and unprescribed drugs; and
36 (iii) Comply with urinalysis or breathalyzer monitoring if
37 needed.

38 (~~(ii)~~) (b) If the court orders inpatient competency
39 restoration, the department shall place the defendant in an

1 appropriate facility of the department for competency restoration
2 under ~~((b))~~ subsection (3) of this ~~((subsection))~~ section.

3 ~~((iii))~~ (c) If the court orders outpatient competency
4 restoration, the court shall modify conditions of release as needed
5 to authorize the department to place the person in approved housing,
6 which may include access to supported housing, affiliated with a
7 contracted outpatient competency restoration program. The department,
8 in conjunction with the health care authority, must establish rules
9 for conditions of participation in the outpatient competency
10 restoration program, which must include the defendant being subject
11 to medication management ~~((and))~~. The court may order regular
12 urinalysis testing ~~((for defendants who have a current substance use~~
13 ~~disorder diagnosis))~~. The outpatient competency restoration program
14 shall monitor the defendant during the defendant's placement in the
15 program and report any noncompliance or significant changes with
16 respect to the defendant to the department and, if applicable, the
17 forensic navigator.

18 ~~((iv))~~ (d) If a defendant fails to comply with the restrictions
19 of the outpatient competency restoration program such that
20 restoration is no longer appropriate in that setting or the defendant
21 is no longer clinically appropriate for outpatient competency
22 restoration, the ~~((department shall remove the defendant from the~~
23 ~~outpatient restoration program. The department shall place the~~
24 ~~defendant instead))~~ director of the outpatient competency restoration
25 program shall notify the authority and the department of the need to
26 terminate the outpatient competency restoration placement and intent
27 to request placement for the defendant in an appropriate facility of
28 the department for inpatient competency restoration ~~((for no longer~~
29 ~~than twenty-nine days regardless of any time spent in outpatient~~
30 ~~competency restoration, in addition to reasonable time for transport~~
31 ~~to or from the facility))~~. The outpatient competency restoration
32 program shall coordinate with the authority, the department, and any
33 law enforcement personnel under (d)(i) of this subsection to ensure
34 that the time period between termination and admission into the
35 inpatient facility is as minimal as possible. The time period for
36 inpatient competency restoration shall be reduced by the time period
37 spent in active treatment within the outpatient competency
38 restoration program, excluding time periods in which the defendant
39 was absent from the program and all time from notice of termination
40 of the outpatient competency restoration period through the

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

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

18 (ii) The department shall notify the court and parties of the
19 (change in placement) defendant's admission for inpatient
20 competency restoration before the close of the next judicial day. The
21 court shall schedule a hearing within five days to review the
22 (placement and) conditions of release of the defendant and
23 anticipated release from treatment and issue appropriate orders.
24 (The standard of proof shall be a preponderance of the evidence, and
25 the court may in its discretion render its decision based on written
26 submissions, live testimony, or remote testimony.

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

33 (b)) (3) The placement under (a)) subsection (2) of this
34 (subsection) section shall not exceed (twenty-nine) 29 days if
35 the defendant is ordered to receive inpatient competency restoration,
36 (or) and shall not exceed (ninety) 90 days if the defendant is
37 ordered to receive outpatient competency restoration. The court may
38 order any combination of this subsection (, not to exceed ninety
39 days. This period must be considered to include only the time the
40 defendant is actually at the facility and shall be in addition to

1 ~~reasonable time for transport to or from the facility)), but the~~
2 total period of inpatient competency restoration may not exceed 29
3 days.

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

11 ~~((d-i))~~ (5)(a) If the proceedings are dismissed under RCW
12 10.77.084 and the defendant was on conditional release at the time of
13 dismissal, the court shall order the designated crisis responder
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))~~ (b) If the defendant was in custody and not on
18 conditional release at the time of dismissal, the defendant shall be
19 detained and sent to an evaluation and treatment facility for up to
20 ~~((seventy-two))~~ 120 hours if the defendant has not undergone
21 competency restoration services or has engaged in outpatient
22 competency restoration services and up to 72 hours if the defendant
23 engaged in inpatient competency restoration services, excluding
24 Saturdays, Sundays, and holidays, for evaluation for purposes of
25 filing a petition under chapter 71.05 RCW. The ~~((seventy-two))~~ 120-
26 hour or 72-hour period shall commence upon the next nonholiday
27 weekday following the court order and shall run to the end of the
28 last nonholiday weekday within the ~~((seventy-two))~~ 120-hour or 72-
29 hour period.

30 ~~((3))~~ (6) If the defendant is charged with a nonfelony crime
31 that is not a serious offense as defined in RCW 10.77.092 and found
32 by the court to be not competent, the court may stay or dismiss
33 proceedings and detain the defendant for sufficient time to allow the
34 designated crisis responder to evaluate the defendant and consider
35 initial detention proceedings under chapter 71.05 RCW. The court must
36 give notice to all parties at least ~~((twenty-four))~~ 24 hours before
37 the dismissal of any proceeding under this subsection, and provide an
38 opportunity for a hearing on whether to dismiss the proceedings.

39 ~~((4))~~ (7) If at any time the court dismisses charges under
40 subsections (1) through ~~((3))~~ (6) of this section, the court shall

1 make a finding as to whether the defendant has a history of one or
2 more violent acts. If the court so finds, the defendant is barred
3 from the possession of firearms until a court restores his or her
4 right to possess a firearm under RCW 9.41.047. The court shall state
5 to the defendant and provide written notice that the defendant is
6 barred from the possession of firearms and that the prohibition
7 remains in effect until a court restores his or her right to possess
8 a firearm under RCW 9.41.047.

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

14 **Sec. 6.** RCW 10.77.250 and 1987 c 75 s 1 are each amended to read
15 as follows:

16 ((The)) (1) Within amounts appropriated, the department shall be
17 responsible for all costs relating to the evaluation and inpatient
18 treatment of persons committed to it pursuant to any provisions of
19 this chapter, and the logistical and supportive services pertaining
20 thereto except as otherwise provided by law. Reimbursement may be
21 obtained by the department pursuant to RCW 43.20B.330.

22 (2) Within amounts appropriated, the authority shall be
23 responsible for all costs relating to outpatient competency
24 restoration programs.

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

27 No officer of a public or private agency, nor the superintendent,
28 professional person in charge, his or her professional designee, or
29 attending staff of any such agency, nor any public official
30 performing functions necessary to the administration of this chapter,
31 nor peace officer responsible for detaining a person pursuant to this
32 chapter, nor the state, a unit of local government, an evaluation and
33 treatment facility, a secure withdrawal management and stabilization
34 facility, or an approved substance use disorder treatment program
35 shall be civilly or criminally liable for performing duties pursuant
36 to this chapter with regard to the decision of whether to detain a
37 person for medical clearance or treatment, provided that such duties
38 were performed in good faith and without gross negligence.

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

3 The authority shall report annually to the governor and relevant
4 committees of the legislature, beginning November 1, 2022, and shall
5 make the report public, describing:

6 (1) How many individuals are being served by outpatient
7 competency restoration programs and in what locations;

8 (2) The length of stay of individuals in outpatient competency
9 restoration programs;

10 (3) The number of individuals who are revoked from an outpatient
11 competency restoration program into inpatient treatment, and the
12 outcomes of other individuals, if any, whose participation in an
13 outpatient competency restoration program were terminated before the
14 completion of the program; and

15 (4) For individuals who were revoked from an outpatient
16 competency restoration program into an inpatient competency
17 restoration program, how many days the individuals spent in
18 outpatient competency restoration treatment and inpatient competency
19 restoration treatment, and whether the restoration programs resulted
20 in a finding of competent to stand trial or another outcome.

21 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of
23 the state government and its existing public institutions, and takes
24 effect immediately."

25 Correct the title.

EFFECT: Includes psychiatric advanced registered nurse
practitioners in the definition of "professional person."

 Revises performance targets and maximum time limits for
competency services as follows: (1) To offer admission for inpatient
competency evaluation or restoration, a maximum of seven days from
receipt of the court order, or a maximum of 14 days from signature of
the order, whichever is shorter; and (2) to complete a competency
evaluation in a jail and to offer admission for a defendant ordered
committed for evaluation following dismissal of felony charges, a
performance target of 14 days or fewer and a maximum of 14 days from
receipt of the court order, or a maximum of 21 days from signature of
the order, whichever is shorter. Removes language stating that
performance targets and maximum time limits run from the date the
state hospital receives the court referral and charging documents,
discovery, police reports, names and addresses of the party's
attorneys, name of the judge ordering the evaluation, information
about the alleged crime, and the defendant's criminal history.

Provides that when a person is removed from an outpatient competency restoration program (OCRP) to inpatient competency restoration, the time period for inpatient treatment must be reduced by the time spent in active treatment within the OCRP, excluding time periods in which the defendant was absent from the OCRP and all time from notice of termination of the outpatient competency restoration period through the defendant's admission to the facility.

Provides that where a medical clearance is required prior to transport of a person to an inpatient competency restoration facility, a peace officer may transport the person to specified facilities for medical clearance once a bed is available at the designated inpatient competency restoration facility.

For an initial competency restoration order, increases the maximum time period for outpatient competency restoration for a defendant whose highest charge is a class C felony or nonviolent class B felony from 45 days to 90 days. Specifies that if outpatient competency restoration is terminated and the defendant is admitted to an inpatient facility, the period of inpatient treatment during the first competency restoration period must not exceed 45 days.

Provides that a period of competency restoration treatment includes time the person is actively participating in an outpatient competency restoration program (not just the time the defendant is at a facility).

Provides that where a defendant is detained for a civil commitment evaluation following dismissal of charges based on incompetency to stand trial, the defendant may be detained for up to 120 hours (rather than 72 hours) if the defendant engaged in outpatient competency restoration services.

Provides that a competency status check may be requested when a defendant remains in jail more than 21 days after (rather than 21 days after) an order to transport the defendant to an inpatient facility, and requires notice of the request for a status check to be provided to all parties.

Requires the Health Care Authority to make public its annual report on OCRPs.

Adds an emergency clause and provides that the act takes effect immediately.

--- END ---